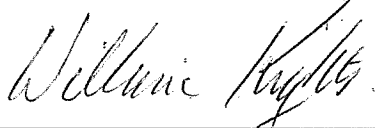


This is Exhibit "O" referred to in the  
affidavit of Asvini Krishnamoorthy  
sworn before me at Toronto, Ontario  
this 29<sup>th</sup> day of January, 2016

A handwritten signature in cursive script, appearing to read "William Knight".

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A Commissioner for taking affidavits  
within the Province of Ontario

# TABLE OF CONTENT

## Volume I

Onglet	Description
A.	Affidavit of J.J. CAMP, QC
1.	*EXHIBIT A Letter to Singleton Urquhart Scott from Camp Church & Associates dated 18 April 96/sworn 23 November 99
2.	*EXHIBIT B Contingency Fee Agreement dated 16 October 97/sworn 23 November 99
3.	*EXHIBIT C Letter to Russell & DuMoulin from Lemer Kambras dated 8 October 96/sworn 23 November 99
4.	*EXHIBIT D Letter to Camp Church & Associates from Cox, Taylor dated 16 January 97/sworn 23 November 99
5.	*EXHIBIT E Memorandum to J.J. Camp and Bruce Lemer from Sharon Matthews dated 9 June 97/sworn 23 November 99
6.	*EXHIBIT G Letter to Allan Rock from Camp Church & Associates dated 18 November 97/sworn 23 November 99
7.	*EXHIBIT H Newspaper Article entitled "Ministers reject hepatitis C compensation" dated 11 September 96/sworn 23 November 99
8.	*EXHIBIT I Letter to Russell & DuMoulin et al. from Camp Church & Associates dated 17 December 97/sworn 23 November 99
9.	*EXHIBIT J Letter to Gignac Sutts, et al. from Camp Church & Associates dated 26 January 98/sworn 23 November 99
10.	*EXHIBIT K Minutes of Hepatitis C Class Counsel Conference Call dated 29 January 98/sworn 23 November 99
11.	*EXHIBIT L Letter to Department of Justice and Ministry of Attorney General from Camp Church & Associates dated 30 January 98/sworn 23 November 99
12.	*EXHIBIT M Letter to Department of Justice and Ministry of Attorney General from

	Camp Church & Associates dated 3 February 98/sworn 23 November 99
13.	*EXHIBIT N - Notice of Press Conference of Anita Endean et al. - dated 6 February 98/sworn 23 November 99
14.	*EXHIBIT O Letter to Gignac Sutts, et al. from Camp Church & Associates dated 9 February 98/sworn 23 November 99
15.	*EXHIBIT P Letter to Gignac Sutts, et al. from Camp Church & Associates dated 12 February 98/sworn 23 November 99
16.	*EXHIBIT Q Letter to Gignac Sutts, et al. from Camp Church & Associates dated 18 February 98/sworn 23 November 99
17.	*EXHIBIT R Letter to Gignac Sutts et al. from Camp Church & Associates, with attached memo prepared by Bill Selnes dated 4 March 98/sworn 23 November 99
18.	*EXHIBIT S Letter to Gignac Sutts et al. from Camp Church & Associates, with attached memo prepared by Sharon Matthews dated 30 March 98/sworn 23 November 99
19.	*EXHIBIT T Memorandum to file from J.J. Camp dated 30 March 98
20.	*EXHIBIT U Letter to Gignac Sutts from Camp Church & Associates dated 31 March 98/sworn 23 November 99
21.	*EXHIBIT V Letter to Gignac Sutts et al. from Camp Church & Associates, with Minutes of Class Counsel meeting attached dated 9 April 98/sworn 23 November 99
22.	*EXHIBIT W Letter to Gignac Sutts et al. from Camp Church & Associates with Memorandum to J.J. Camp from Sharon Matthews attached - dated 11 March 99/sworn 23 November 99
23.	*EXHIBIT X Letter to Department of Justice from Camp Church & Associates, with draft agenda attached dated 16 April 98/sworn 23 November 99
24.	*EXHIBIT Y Letter to Camp Church & Associates et al. from Department of Justice, with Points of Record attached dated 27 April 98/sworn 23 November 99
25.	*EXHIBIT Z Letter to Genest Murray DesBrisay Lamek, et al. from Camp Church & Associates dated 28 April 98/sworn 23 November 99
26.	*EXHIBIT AA Memorandum to Interest Group Liaison Sub-Committee from Sharon Matthews dated 1 May 98/sworn 23 November 99
27.	*EXHIBIT BB Letter to Kenneth Arenson from Camp Church & Associates dated 4 May 98/sworn 23 November 99
28.	*EXHIBIT CC Letter to J.J. Camp from Kenneth Arenson dated 4 May 98/sworn 23

	November 99
29.	*EXHIBIT DD Letter to Ministry of Attorney General from Camp Church & Associates dated 12 May 98/sworn 23 November 99
30.	*EXHIBIT EE Letter to Department of Justice from Camp Church & Associates dated 4 May 98/sworn 23 November 99
31.	*EXHIBIT FF Letter to Buchan Derrick & Ring and Elliott & Kim from Camp Church & Associates, with attached letter from Department of Justice to Camp Church & Associates dated 1 May 98/sworn 23 November 99
32.	*EXHIBIT GG Letter to Camp Church & Associates from Department of Justice dated 12 May 98/sworn 23 November 99
33.	*EXHIBIT HH Points of Record from HCV Negotiating Meeting dated 6 May 98
34.	*EXHIBIT II Letter to Buchan Derrick & Ring, et al. from Camp Church & Associates dated 8 May 98/sworn 23 November 99
35.	*EXHIBIT JJ Letter to Pierre Lavigne from Camp Church & Associates dated 8 May 98/sworn 23 November 99
36.	*EXHIBIT KK Letter to Gignac Sutts et al. from Camp Church & Associates, with Damage Estimates attached dated 15 May 98/sworn 23 November 99
37.	*EXHIBIT LL Letter to Camp Church & Associates from British Columbia Ministry of Attorney General dated 19 May 98/sworn 23 November 99
38.	*EXHIBIT MM Letter to Gignac Sutts and Pierre Lavigne from Camp Church & Associates dated 21 May 98/sworn 23 November 99
39.	*EXHIBIT NN Letter to Harvey Strosberg, Dawna Ring, Douglas Elliott, Bill Selnes, Clint Docken, Philip Tinkler, Kenneth Arenson, Harvin Pitch, Pierre Lavigne, Michel Savonitto -- Bertrand Paiement, Paul Lamek and Bruce Lemer Re: Hepatitis C Negotiations dated May 21, 1998



A

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

**AFFIDAVIT**

I, J.J. CAMP, Q.C., Barrister and Solicitor, of 4<sup>th</sup> Floor, 555 West Georgia Street,

DO SOLEMNLY AFFIRM AND SAY AS FOLLOWS:

1. I am the solicitor of record for the representative plaintiff in this matter and as such I have knowledge of the facts to which I depose in this affidavit, except where I state them to be on information and belief and where so stated I verily believe them to be true.

2. I make this affidavit in support of an application to this Court to approve class counsel fees in the lump sum amount of \$15,000,000 plus all reasonable disbursements plus all

applicable taxes. This same sum is being sought by class counsel in Quebec and by class counsel in Ontario. Class counsel for the hemophiliacs is seeking approval of class counsel fees in this court of \$500,000 plus all reasonable disbursements plus all applicable taxes. Class counsel for the hemophiliacs is seeking approval by the Quebec court of a further \$2,000,000 and from the Ontario court of a further \$5,000,000, making a total of \$7,500,000.

3. I have been senior counsel on this matter since it was commenced in September, 1996.

#### My Experience and Qualifications

4. I was called to the bar in 1970 and practiced in the field of civil litigation in British Columbia ever since. In addition, I have had occasional calls in several other Provinces and Territories. From 1970 to 1993 I practiced at Ladner Downs and since 1993 I have practiced at Camp Church & Associates ("CC&A"). I have argued cases at all levels of court, including approximately 15 cases before the Supreme Court of Canada.

5. I have received the following appointments and held the following positions:

- (a) Queen's Counsel, 1986;
- (b) President of the BC Branch of the Canadian Bar Association, 1982-1983;
- (c) National President of the Canadian Bar Association, 1991-1992;
- (d) Fellow of the American College of Trial Lawyers, 1996; and
- (e) Fellow of the International Academy of Trial Lawyers, 1993.

6. During the early part of my career I acted for a number of insurers but over the course of time I started to act for more and more plaintiffs in tort cases, particularly in product liability matters, and more particularly in the aviation field. In 1987 I became involved in pursuing personal injury and death claims associated with the inhalation of asbestos fibres as well as property damage claims arising from the installation of asbestos containing materials in buildings, industrial installations and ships. This occupied a great deal of my time from 1987 to 1995 and still occupies a small percentage of my time. My practice has also always included some medical malpractice cases.

7. My involvement in asbestos litigation provided particularly relevant experience to this litigation because:

- (a) it gave me experience with mass tort litigation principles and strategies, as well as class action counsel and class action litigation principles and strategies in the U.S.;
- (b) the asbestos disease process was similar to the HCV disease process insofar as both were and are part of an emerging body of medical science and both have long latency periods and potentially catastrophic consequences; and
- (c) it gave me experience in complex and substantial settlement negotiations. I was part of a negotiating team that settled asbestos related claims both in the personal injury and property damage arenas that now exceed \$50 million in this jurisdiction.

8. I have also had considerable experience dealing with legal and other issues at the political level. For example, during my term as National President of the Canadian Bar Association I was heavily engaged in the constitutional issues surrounding the Charlottetown Accord. This required me to deal with and obtain a consensus of Canadian Bar Association leaders across Canada and to regularly confer with politicians at all levels on the subject.

9. Because of my experience with mass tort claims, U.S. class proceedings and U.S. class counsel, I was asked by the Attorney General of British Columbia in 1995 to act as a consultant in the possible formulation of legislation permitting class action proceedings in British Columbia. I attended meetings with representatives of the Ministry of the Attorney General and members of the British Columbia bar to discuss issues pertaining to the formulation of the Class Proceedings Act (the "Act") which became law in 1995. Hence, I was reasonably knowledgeable about the Act and how class-action litigation might be exploited by class-action counsel in British Columbia.

10. During the last ten years of my career approximately, I have acted predominantly for British Columbia plaintiffs in product liability cases on a contingency fee basis with my firm carrying all disbursements and case expenses. In those cases, my contingency fee percentage recovery has ranged from 25 to 40% depending on the circumstances of the case.

11. During my career I have also acted on several contingency fee cases in which I have not been successful. For example, I acted on a contingency fee basis for a grade 10 student who was rendered quadriplegic as a result of a school yard accident during a gym class. The case

was hard fought in a long trial, was appealed to the British Columbia Court of Appeal and leave was sought to the Supreme Court of Canada. I lost the case at every level and in so doing committed over \$300,000 in time at my then hourly rates and over \$150,000 in disbursements, none of which was recovered.

### The Commencement of this Litigation

12. In late February, 1996, Bruce Lemer ("Lemer") approached me to consider acting as senior counsel on an initiative to launch a class proceeding on behalf of HCV claimants in British Columbia against the Canadian Red Cross Society ("CRC") and the Federal Crown and the Province of British Columbia ("British Columbia"). He had been invited to a meeting of HCV sufferers who had invited several different lawyers to speak to them concerning the possibility of acting for them in a class-action.

13. I met at some length with Lemer to discuss the proposed class proceeding. We identified the following categories of risks at that time:

- (a) the factual and legal underpinnings were undeveloped;
- (b) some individual actions across Canada had been commenced but so far as he was aware, they were all dormant;
- (c) the CRC had resisted all tainted blood litigation to that time;
- (d) the Federal Crown and British Columbia would probably raise the policy defence to any negligence action; and
- (e) the only cases in Canada which had sought certification of tainted blood issues had been denied certification.

14. Militating against these risks in a small measure was the fact that the Federal and Provincial and Territorial Governments ("FPT Governments") had set a precedent by making compensation available to persons infected with HIV as a result of blood transfusion. However, that compensation was very modest and unilaterally imposed without any input or negotiations by or on behalf of the claimants.

15. Lemer and I concluded that a HCV class proceeding would be a major undertaking and it would very likely be vigorously resisted by the FPT Governments and the CRC, all of whom appeared to have unlimited resources.

16. On March 9, 1996 I attended at the meeting of potential HCV claimants and advised them how Lemer, with the support of his then firm, and I, with the support of CC&A, proposed to handle a possible British Columbia HCV class proceeding. I indicated that the class proceeding would be risky and very expensive and would take a long time to conclude. On the subject of legal disbursements, I indicated that out-of-pocket expenses may reach or exceed \$500,000. I indicated that we would be prepared to act on what I called a "pure contingency fee basis", that is, a sliding percentage scale up to 33 and 1/3 percent of any settlement or judgment with no expectation of the HCV claimants funding any disbursements. I sensed "a huge sigh of relief" from the HCV sufferers and their family members when I made this proposal. So far as I could tell, we were the only lawyers who were willing to act on a pure contingency basis.

17. A few days after this meeting, I was informed that the HCV sufferers had collectively asked Lemer and I to act for them but they wanted us to consider including one of the

other lawyers who made a presentation, David Butcher, as part of our team if possible. We held discussions with Mr. Butcher which culminated in a letter dated April 18, 1996, a copy of which is attached as Exhibit "A". An agreement was reached with Mr. Butcher and he was not made part of our team. At or about this time, Sharon Matthews ("Matthews"), an associate lawyer with my firm, began to work on this matter.

18. Throughout the summer of 1996, CC&A and Lerner undertook legal and factual research and drafted the Writ of Summons and Statement of Claim. Throughout the course of our investigation and legal analysis, it had become apparent that the best cause of action ran from approximately August 1, 1986 to July, 1990 and the action was limited to infections which occurred in that time frame in order to enhance the chances of having the case certified. Because there was a different liability case for those persons infected outside that time frame, Matthews and I spoke with and met with David Klein ("Klein") on several occasions about acting for the pre-August, 1986 and post-July, 1990 HCV sufferers and to commence a class-action on their behalf which would follow our class-action.

19. On September 18, 1996, Anita Endean ("Endean"), the representative plaintiff, advised my firm that she wanted the benefit of independent legal advice before executing the proposed fee agreement, but she instructed us to file the Writ of Summons and Statement of Claim in her name. The Writ of Summons and Statement of Claim were issued on September 19, 1996. On September 20, 1996, Endean advised that she had received the benefit of independent legal advice and that she had signed the fee agreement dated October 16, 1997, a copy of which is attached as Exhibit "B".



### Certification

20. On October 1, 1996 we sought the agreement of the CRC to toll limitation periods pertaining to class members until the court had decided the issue of class certification. Attached as Exhibit "C" is a copy of a letter dated October 8, 1996 from Lerner to counsel for the CRC confirming that the CRC would not agree. This, among other reasons, caused us to embark on a "hurry up offence" to strive to have the certification hearing as quickly as possible.

21. During fall of 1996, the CRC issued third party proceedings against all hospitals and doctors who had treated the representative plaintiffs during the material time.

22. Throughout the fall and winter of 1996 and the early spring of 1997 we prepared for the certification hearing by:

- (a) exchanging pleadings;
- (b) issuing and responding to interrogatories;
- (c) issuing demands for the discovery of documents;
- (d) issuing third party notices;
- (e) issuing particulars;
- (f) reviewing literally thousands of documents;
- (g) preparing the application to certify including development of the common issues and voluminous affidavit material;
- (h) preparing for and attending at several pre-certification conferences;
- (i) amending pleadings;

- (j) preparing for and attending at contested motions including document production by the CRC;
- (k) preparing for and attending at three days of cross-examination on affidavits; and
- (l) responding to outstanding request for information.

23. At the same time, CC&A and Lemer continued legal and factual analysis on both the certification and liability issues. Lemer, Matthews and I attended meetings with knowledgeable experts in the field including Dr. Sherlock, a Vancouver virologist, Dr. Vaughan, an Australian haematologist who had expertise in blood banking issues, particularly with HCV, in support of the certification motion and began making contacts with other medical experts pertaining to the liability case. Literally hundreds of articles on the subject of HCV were read and digested. Pertinent evidence from the Krever Commission was collected and reviewed.

24. Certification of the negligence issues was vigorously resisted by the CRC and third party doctors and hospitals in a five day hearing in March, 1997. The Federal Crown and British Columbia resisted certification on the spoliation issues. Counsel for the CRC indicated to the court at the outset of the certification hearing that the CRC would demonstrate that certification would fail on every single issue.

25. The CRC's strategy was to demonstrate the vastness and complexity of the issues sought to be certified. The material filed on the certification hearing was many volumes thick. The medical issues were very complex and required a great deal of study and investigation. The

joinder of the third party doctors and hospitals by the CRC served to complicate matters by raising duty to warn and comparative fault issues and the third parties opposed certification.

26. At that time, there were six other HCV related cases in British Columbia and they were all inactive. Attached as Exhibit "D" is a copy of a letter from Susan Beach, counsel for the plaintiff in that action, which points out the "exorbitant disbursements" and the "multiple medical experts" needed and that the plaintiff could not afford to fund the disbursements. Ms. Beach informed me on or about the end of January, 1997 that the case was dormant and would not likely be revived.

27. The certification legal issues were both complex and largely matters of first impression. This was the first certification hearing pertaining to an HCV class action in Canada. Jurisprudence under the Act was in its developmental stage. The parties primarily argued Ontario, Quebec and American authorities. The breadth and volume of the certification material filed by the CRC and the length and complexity of the arguments and jurisprudence presented by counsel for the CRC, depict the vigour with which this case was defended by the CRC at certification.

28. On May 22, 1997, this Court issued Reasons for Judgment granting the certification motion.

### Certification Appeal

29. The CRC appealed the certification as did the FPT Governments and the third parties. The CRC filed a very thorough and well researched Factum. Substantial preparation and legal research went into preparing our Factum. The appeal was set to be heard by the British Columbia Court of Appeal in March, 1998 for three days. The CRC abandoned their appeal a few days before the hearing and only after settlement discussions had commenced with the FPT Governments.

### Spoliation

30. In January, 1997, John Grace, the Information Commissioner of Canada, concluded an investigation of a complaint against Health Canada concerning the destruction of verbatim transcripts of meetings of the Canadian Blood Committee from and after 1980 which covered the period of time to which this action pertains. Matthews undertook research into the possibility of an independent cause of action for the destruction of evidence. As a result of some emerging Canadian jurisprudence and some settled but divergent US authorities, I determined that a potential cause of action could be constructed to lead the claimants directly to judgment. Furthermore, the factual allegations gave rise to a viable claim for punitive damages. We amended our pleadings to plead spoliation against the Federal Crown and British Columbia, both of which reserved their rights to argue that spoliation did not constitute a cause of action for the purposes of certifying the class proceeding.

31. This issue was hotly contested at the certification hearing and Mr. Justice Smith ruled in our favour and certified the spoliation issue. This issue was appealed to the British

Columbia Court of Appeal which necessitated further research. The British Columbia Court of Appeal overturned Mr. Justice Smith.

32. The Federal Crown and British Columbia took the position that striking the claim of spoliation meant that the claim for punitive damages must also be struck. The resolution of this issue required an appearance before the Registrar who referred the matter back to the Court of Appeal panel. The issue was settled in our favour.

33. CC&A sought leave to appeal this matter from the Supreme Court of Canada. The FPT Governments sought my agreement to stay any further appeal process pending good faith settlement negotiations. I refused and pressed on with the leave motion. The Supreme Court of Canada granted leave to appeal and an appeal date is set for December 10, 1999. So far as I am aware, our allegation that spoliation constituted a cause of action was a novel legal argument in Canada. I had previously been successful in the Supreme Court of Canada defending the proposition that a plea which reveals an arguable or difficult point of law or which explores the frontier of the expanding legal system, should not be cut off and I was therefore reasonably confident of success on this appeal.

#### Post Certification Issues

34. Immediately after the certification order our work expanded geometrically.

35. We adopted the strategy at this time of vigorously pressing ahead with a trial on the common issues. We issued demands for list of documents and we started to get our experts

geared up to prepare reports for the trial on the common issues. We continued to thoroughly analyse and digest the law in this emerging area. For example, attached as Exhibit "E" is a copy of a memorandum dated June 9, 1997 developed by Matthews pertaining to relevant US authorities. We conferred with counsel from Ireland, England, Australia and the US who were knowledgeable about HCV litigation.

36. In addition, British Columbia had undertaken a Blood Recipient Notification Program. We attended meetings with the doctors, statisticians and Ministry of Health personnel responsible for running this program so as to ensure that we could become fully familiar with the program and link the program with class membership. A large number of class claimants approached CC&A and additional resources had to be found to deal with this influx.

37. By the fall of 1997, approximately 250 potential class members had registered with my firm. A dedicated toll-free telephone line for HCV claimants was established. Trace back procedures, hospital records and other relevant information was amassed on behalf of many of these HCV claimants. The press, which had been following the litigation from the outset, heightened its interest as a result of the certification.

38. Up to this time, we enjoyed a close working relationship with the Hepatitis C Society of Canada. In November, 1997 Matthews attended their Annual General Meeting to report on developments in British Columbia and to gain the benefit of the medical presentations and the views of persons infected with HCV.

39. In late November, 1997 the Krever Report was released and Matthews attended in Ottawa for its release and meetings with other counsel working on HCV cases. We briefed, digested and reported to all potential class members summarizing the Krever Report.

#### Establishment of a Network of Canadian HCV Class Counsel

40. Other Canadian counsel who had been following the BC certification proposed a meeting to explore a pan-Canadian litigation strategy. Matthews, Lemer and I attended a meeting of counsel in Toronto on August 15, 1997. Approximately 20 lawyers were there including Harvey Strosberg, Q.C. ("Strosberg") who had given notice of an intention to commence an Ontario HCV class proceeding with a team of lawyers from most of the provinces which did not have class proceedings legislation, and Pierre Lavigne ("Lavigne") who had initiated an HCV class proceeding in Quebec. At this meeting and in subsequent conferences, we forged a cross Canada coalition of lawyers (the "Coalition") to advance the interest of our HCV class members including strategies to put pressure on the FPT Governments to offer compensation to the HCV class members. Attached as Exhibit "F" is a copy of my letter dated September 24, 1997 setting forth my very preliminary thoughts on compensation.

#### Settlement Negotiations

##### **November 1997 - April 1998**

41. Although all parties were waiting on the Krever Report to be handed down by the end of November, 1997, I tried to open up settlement negotiations by writing directly to the Federal Minister of Health. Attached as Exhibit "G" is a copy of my letter dated November 18, 1997 to the Honourable Allan Rock.

42. I took on the task of spearheading the negotiations on a Canada wide basis. The Krever Report was very critical of the CRC and the FPT Governments. Although the Federal Government was willing to consider settlement negotiations they required Provincial government participation. The Provincial governments adopted the uniform stance that the medical health care scheme in Canada was sufficient to address the problem. Attached as Exhibit "H" is a copy of a typical newspaper article, in this case the Toronto Star of September 11, 1996, reiterating the position of the Provinces. Because our class action was the furthest advanced, the Coalition asked me to try and break the log jam and get British Columbia to the settlement table. I mobilized our class members to lobby the Premier and Provincial Minister of Health. I, along with others, initiated calls to Members of the Legislative Assembly in both Government and Opposition.

43. During this period of time it became clear to us that although the CRC was maintaining a "scorched earth" litigation policy, they were also keen on brokering a settlement if possible. The CRC did not have very much money to contribute but they did have "their good offices" and other intangibles including knowledgeable and competent counsel.

44. The Krever Report recommended a no-fault approach to compensation and the Coalition was concerned that the FPT Governments would adopt the approach they had used in the HIV litigation context and institute a "take it or leave it compensation package". The strategy we developed was to use the certification of the British Columbia class action to induce British Columbia to get the negotiations started as it was unlikely that British Columbia would take measures that interfered with a class that had already been certified by a British Columbia court.



Thus, I urged the Governments to negotiate a settlement within the structure of the Act. This approach seem to find some measure of favour with British Columbia and certainly with the CRC.

45. The major tasks undertaken shortly after the issuance of the Krever Report were as follows:

- (a) on December 15, 1997 I wrote a draft letter to the Coalition, the Hepatitis C Society of Canada and others. The draft included proposals for consent certifications in Ontario and Quebec with a national sub-class to cover the remaining provincial jurisdictions. The letter also contained a broad outline of the matters to be addressed in settlement many of which eventually were incorporated into the final settlement;
- (b) I organized a press conference in Vancouver on December 16, 1997 to urge the FPT Governments to commence settlement negotiations. We had approximately six of our class members appear and speak about their condition, circumstances and need for compensation;
- (c) a conference call of approximately 16 Coalition lawyers and representatives of the Hepatitis C Society of Canada was held on December 16, 1997. The playing field was extremely complex. Some of the issues to be addressed included: (1) differences between the certified BC action and other class actions which had not been certified; (2) differences between pre-1986 and post-1990 HCV sufferers who vastly outnumbered the 1986-1990 HCV sufferers; (3) liability differences between HCV hemophiliac sufferers and HCV non-hemophiliac sufferers; (4) how to handle the

probable demise of the CRC and the transition to a new blood agency; (5) differences between those jurisdictions that had class action legislation and those jurisdictions which did not; (6) how to deal with the rift between the Federal Government and the PT Governments on getting negotiations started; (7) how to deal with the rift between some of the PT Governments - Quebec and Saskatchewan had both made public pronouncements in favour of compensating HCV sufferers; and (8) how to reconcile the differences in approach between the Hepatitis C Society of Canada and the Coalition. It was impossible to obtain consensus on all these issues but it was clear to me that we had to move swiftly and we had to take the initiative. I sent out my draft settlement letter of December 15, 1997 in final form on December 17, 1997, a copy of which is marked Exhibit "I".

46. Over the ensuing weeks, I learned from the FPT Governments that my letter of December 17, 1997 had an extraordinarily wide circulation across Canada. Representatives of the Ministry of Health of all FPT Governments were meeting in late January, 1998 to discuss the matter. In the meantime I pushed on with the British Columbia class action. In my opinion, it was extremely important at this juncture to show that we had the fortitude and resources to force the matter to a litigation conclusion if necessary. I reinforced this at every opportunity. For example, we successfully opposed an application by the CRC to have the appeal of the certification of the class heard by a five judge panel.

47. Throughout early 1998 I continued to liaise with the Coalition to promote strategies to bring the FPT Governments to the table:

- (a) Attached as Exhibit "J" is a copy of my letter dated January 26, 1998 to the Coalition making several suggestions pertaining to settlement strategies;
- (b) on January 29, 1998, the Coalition evinced a concern was that the FPT Governments would attempt an "end run" the around the British Columbia class action which had been certified, and the Ontario and Quebec class actions which were moving toward certification, by passing legislation similar to the package offered to the HIV victims without any opportunity to negotiate on behalf of the class claimants. The FPT Governments had indicated publicly that they were discussing the issue of compensation for HCV claimants and would be meeting again in mid-February, 1998. We proposed that our class members publicly demand that they be invited to any bargaining table. Attached as Exhibit "K" is a copy of the minutes generated by Matthews from the January 29, 1998 conference call;
- (c) on January 30, 1998 I wrote to counsel for British Columbia, Clif Prowse ("Prowse") and counsel for the Federal Crown, John Haig, Q.C. ("Haig") and demanded that the claimants and their lawyers have a seat at the table to discuss compensation. A copy of my letter dated January 30, 1998 to Prowse and Haig is attached as Exhibit "L";
- (d) I spoke with Prowse and Haig and alerted them to our growing sense of frustration. Attached as Exhibit "M" is a copy of my letter dated February

3, 1998 to Prowse and Haig indicating that I intended to hold a further press conference on February 6, 1998;

- (e) I attempted to coordinate our efforts across Canada on this issue. Bill Selnes, the lead lawyer in Saskatchewan, was arranging a press conference for February 5, 1998 to publicly release my December 17, 1998 letter. I provided material to Clint Docken, the lead lawyer in Alberta, who had scheduled a press conference in Alberta for February 6, 1998;
- (f) on February 4, 1998 I received a letter from Prowse indicating that he and his client were prepared to meet and engage in "without prejudice" negotiations. On February 4, 1998 I had an extensive discussion with Prowse on the subject of possible settlement;
- (g) I also continued to consult with the CRC. Bob Rae, the former Premier of Ontario, was retained to negotiate blood litigation matters on behalf of the CRC. He and I had some communications and on February 6, 1998, just prior to the press conference I had arranged, he telephoned me to indicate the position of the CRC and advised that I could "go public" with that position;
- (h) on February 6, 1998 I held a press conference at which several of our class members were present. The thrust of the press conference is set out in the Notice of Press Conference, a copy of which is attached as Exhibit "N". This press conference and those in Saskatchewan and Alberta generated very substantial press coverage. The class members spoke movingly of

their affliction with HCV, their need for compensation and the frustration at not being engaged in any ongoing discussions pertaining to settlement.

48. These efforts bore fruit and on the afternoon of February 6, 1998 I held the first face-to-face negotiations with the defendants. In attendance was myself, Matthews and Lerner for the plaintiffs, Prowse and Lillian Bains for British Columbia and Haig for the Federal Crown. We agreed that the without prejudice conversations could be summarized and provided to the Coalition. Attached as Exhibit "O" is a copy of my letter dated February 9, 1998 to the Coalition reporting on my meeting with the defendants. Without doubt, this was a breakthrough meeting and, as far as I was concerned, we were now at the negotiating table.

49. On February 11, 1998 and I had a further meeting with Prowse and Haig. We canvassed a number of subjects and the meeting is summarized in my letter dated February 12, 1998 to the Coalition, a copy of which is attached as Exhibit "P". Of particular significance was the fact that the defendants wanted to explore the possibility of a pan-Canadian settlement.

50. On February 18, 1998 I arranged a conference telephone call of the Coalition which is summarized in my letter dated February 18, 1998 to the Coalition, a copy of which is attached as Exhibit "Q". Of particular concern at this time was harmonizing the various class actions across Canada to facilitate a pan-Canadian settlement. I raised this subject with the BC counsel to the CRC and we worked towards harmonizing the common questions in each of the class actions. By the end of February, 1998 we had harmonized the class definitions and the common issues as far as possible.

51. During February, 1998, we commissioned Dr. Anderson to prepare a comprehensive background paper on the virology, epidemiology, clinical course, assessment and treatment of HCV along with the psychological aspects of the disease. I wanted to take the lead in order to shape the compensation package and to establish to the defendants that we knew our business. On more than one occasion, counsel for the defendants indicated that we were "way ahead of them".

52. During March, 1998, we continued to devise strategies to get pan-Canadian settlement negotiations underway. Attached as Exhibit "R" is a copy of my letter dated March 4, 1998 to the Coalition updating them on the prospects of a settlement. During March, 1998 I also continued to have one-on-one discussions with Prowse and Haig pertaining to settlement. We identified the shape of the negotiations and the time frames.

53. In addition, Matthews, Lemer and I conferred with lawyers from Ireland, England, Australia and the United States pertaining to HCV settlement discussions ongoing in those countries.

54. On March 27, 1998 the FPT Governments announced a \$1.1 billion offer to all Canadian 1986-1998 HCV claimants which prompted the following:

- (a) a conference call to the Coalition to organize our response and during which we mapped out future settlement strategies. Attached as Exhibit "S" is a copy of the minutes of that meeting prepared by Matthews;

- (b) during the days and weeks after the announcement of the offer, I was on the telephone with various members of the Coalition and others an average of 4-6 hours per day on matters pertaining to this file:
- (c) on March 30, 1998 I met for the first time with Ivan Whitehall, Q.C. ("Whitehall") who was the chief negotiator for the Federal Government and the chief spokesperson for the FPT Governments. Attached as Exhibit "T" is a copy of a memorandum dated March 30, 1998 of that lunch meeting; and
- (d) a meeting of the Coalition was arranged to establish a negotiating team and an agenda for the negotiations. Attached as Exhibit "U" is a copy of my letter dated March 31, 1998 to Strosberg establishing an agenda for that meeting.

#### April - July 1998

55. From April, 1998, this file occupied at least 75 percent of my time and the time of Matthews. In addition, CC&A had a legal assistant, Kim Graham, who spent almost 100% of her time on this file, primarily communicating with class members and organizing the large volume of paper flow that the file created. It was not uncommon for me and my firm to send and receive a dozen or more letters, faxes and e-mails each day pertaining to HCV matters. For example, CC&A's correspondence clip No. 13 is two inches thick and runs from May 5 to May 12, 1998 and correspondence clip No. 14 is three inches thick and runs from May 13 to May 22, 1998.

56. The April 7, 1998 meeting was attended by approximately 20 lawyers. Attached as Exhibit "V" is a copy of my letter to the Coalition dated April 9, 1998 attaching the minutes prepared by Matthews of that meeting. At that meeting, the Coalition:

- (a) established a Negotiating Committee to negotiate on a pan-Canadian basis.  
I was the member of the committee from British Columbia ;
- (b) established subcommittees to address the following issues:
  - (i) Search For Other Sources of Funds;
  - (ii) Interest Group Liaison;
  - (iii) Jurisdiction and Harmonization of Classes;
  - (iv) Analysis of Class Size, Disease Modelling and Damages;
  - (v) Notification and Advertising; and
  - (vi) Liability.

Matthews or Lemer served on each of these subcommittees and I advised the Coalition that it was imperative that each person who served be prepared to make this matter a first priority.

57. The Negotiating Committee eventually consisted of myself as Chair and representing British Columbia, Cliff Sutts, a solicitor and partner of Strosberg, Paul Lamek Q.C., a very experienced senior counsel, and Doug Elliott, an experienced counsel in tainted blood matters representing Ontario and Dawna Ring, a lawyer with extensive experience in tainted blood matters representing the non-class-action provinces, and Pierre Lavigne ("Lavigne"), co-counsel in the Quebec class action and a lawyer who had taken the primary role on HCV matters at the Krever Inquiry and Michel Savonitto, his co-counsel in the Quebec class-



action and well experienced in blood litigation, representing Quebec. Strosberg, lead counsel for the Ontario and national class-action, felt that it made good political sense for him not to be "front and centre" at this time. I agreed with this assessment. He nevertheless continued to play a pivotal role. In my estimation, the Negotiating Committee had a formidable array of litigation talent as well as lawyers who were extremely well versed in tainted blood litigation.

58. Prowse was appointed the chief spokesperson for the Provincial and Territorial Governments ("PT Governments"). This proved to be helpful because we had a good relationship and we were both from Vancouver. Whitehall chaired the negotiations for the Federal Government and was the chief spokesperson for the FPT Governments.

59. In the meantime, we were forging ahead on the litigation front. My strategy was to keep the pressure on the defendants which I felt would both speed up negotiations and show the defendants that "we meant business". We were continuing to demand documents, amend our pleadings, set the trial of the common issues and the like.

60. The negotiations raised issues particular to the British Columbia class. They included:

- (a) Klein acted for persons infected before August 1, 1986 and therefore represented persons within and without the \$1.1 billion offer and could not be included in the negotiations because of this conflict. By representing the BC class in the negotiations, I was effectively representing a portion of his class and this problem needed to be addressed; and

(b) the \$1.1. billion also included secondarily infected persons and the estates and dependants of deceased class members. The British Columbia class had not included those persons in the certification order.

61. In order to stay abreast of all relevant HCV medical information, Matthews, Lemer and I made it our business to confer regularly with Dr. Anderson and to read all germane medical literature pertaining to HCV. Matthews, for example, attended the Canadian Association for the Study of Liver ("CASL") Consensus Meeting in Toronto on March 5 and 6, 1999 and prepared a memorandum dated March 10, 1999, a copy of which was sent to the Coalition under cover of a letter dated March 11, 1999, a copy of which is attached as Exhibit "W", dealing with such items as a natural history of HCV, PCR testing, treatment of HCV and biopsy, all of which were particularly relevant in our negotiations. Without doubt, Matthews and I spent literally hundreds of hours conferring with doctors and others and reading medical literature to stay abreast of the HCV disease process and treatment.

62. Attached as Exhibit "X" is a copy of my letter dated April 16, 1998 to Whitehall establishing an agenda for our first negotiating session. Whitehall and I agreed at this time, and subject to the concurrence of our respective negotiating committees, that we would fund joint studies of mutual interest, such as disease modelling of HCV, from the settlement funds. I considered this an important issue for two reasons: first, joint funding of studies of mutual interest created an air of trust which would be embedded in the negotiations from the outset and would tend to overcome mutual suspicions about the other side; and second, joint funding relieved the Coalition of a very substantial outlay of funds.

63. The Coalition was concerned about the parallel sets of negotiations going on between ourselves and the FPT Governments and counsel for the hemophiliacs and the FPT Governments. Our primary concern was to ensure that our negotiations not be stalled or undermined by their negotiations. We were both negotiating with the FTP Governments on what they insisted was "up to \$1.1 billion".

64. On April 23, 1998 we held our first negotiating meeting in Ottawa. Despite the intention of having small negotiating committees on both sides, there were approximately 20 lawyers present. Our Negotiating Committee met both before and after this meeting. Attached as Exhibit "Y" is a copy of a letter dated April 27, 1998 to me from Whitehall attaching the Points of Record of our negotiating meeting prepared by Whitehall's office. Although the meeting was fairly productive as a first meeting and three joint committees were established with the FPT Governments, namely, Disease Modelling, Notification and Exigent Claims, I was very concerned about the size and therefore the efficiency of such a large group of negotiators.

65. At that meeting the FPT Governments provided us with a copy of the Laboratory Centre for Disease Control ("LCDC") Remis Report of January, 1998 which estimated the 1986-1990 HCV class size to be approximately 22,000. This figure had received a great deal of notoriety and, so I was informed by Whitehall, was the basis on which the FPT Governments made their offer. In addition, during that meeting Whitehall advised us of two things that he was to repeat on many occasions, namely, the FPT Governments were proceeding on the basis that liability was not admitted and that they had strong and meritorious defenses, and that the settlement offer was "up to \$1.1 billion". At that time, our position was not to engage in

discussions about liability and not to accept that \$1.1 was enough until we knew more about the class size and HCV disease modelling.

66. A further negotiating meeting was set for Vancouver for May 6 or 7, 1998. Attached as Exhibit "Z" is a copy of my letter dated April 28, 1998 to the Coalition setting forth the major issues to be resolved by our side at that time.

67. A conference call of the Negotiating Committee was held on April 30, 1998 and each of the subcommittees were asked to prepare reports for the May, 1998 Vancouver meeting and provide those reports to me. An example of one such report, the report of the Interest Group subcommittee dated May 1, 1998, is attached as Exhibit "AA".

68. During this time the Coalition was particularly concerned with protecting our clients' interests vis-a-vis the CRC, which was not represented at the negotiations, especially given that the transfer of its assets to the Canadian Blood Services ( "CBS") was being negotiated separately between the CRC and the PT Governments. Attached as Exhibit "BB" is a copy of my letter dated May 4, 1998 to Ken Arenson, the chair of the Search For Other Sources of Funds subcommittee on this issue. Attached as Exhibit "CC" is a copy of a response to my letter, from Ken Arenson, dated May 4, 1998. Attached as Exhibit "DD" is a copy of my letter to Prowse dated May 12, 1998 in which I made it plain that the Negotiating Committee was backing Mr. Arenson.

69. One major issue which initially divided us from the FPT Governments was whether compensation would be approached on an individual basis. The FPT Governments pressed for a fixed lump sum to cover all heads of damages with a maximum amount of damages that any claimant could recover. We vigorously and successfully resisted this concept. Attached as Exhibit "EE" is a copy of my letter dated May 4, 1998 to Whitehall on this among other subjects.

70. Another issue which was both sensitive and time-consuming was dealing with counsel for approximately 100 class members who had commenced actions across Canada primarily to protect against the expiry of limitation periods. Attached as Exhibit "FF" is a copy of my letter to Doug Elliott and Dawna Ring dated May 1, 1998 dealing with this issue. On May 4, 1998, I chaired a conference call with eight lawyers from Alberta who had approximately 40-50 HCV cases. The purpose of the call was to dissuade them from proceeding with those actions and, as far as I am aware, the strategy worked.

71. In preparation for the May 7, 1998 meeting I met with Whitehall and Prowse. At that time, we continued to grapple with the issue of cohort size and the size of the compensation fund. We now asserted the position that if the cohort size was 22,000, the \$1.1 billion would be insufficient. We did not want any of the settlement money being withdrawn if it were shown that the cohort size was likely to be substantially less than 22,000. My concerns were heightened when I received Whitehall's letter of May 12, 1998, a copy of which is attached as Exhibit "GG". In this letter Whitehall says "I made the point at the meeting that the Government of Canada set aside the sum of \$1.1 billion based on the epidemiological study, a

copy of which you have. Clearly the ultimate settlement must reflect real numbers." I was coming to the conclusion that the cohort size would be much smaller than 22,000 for two principal reasons: first and foremost, the British Columbia cohort was no greater than 1,500 and British Columbia constituted approximately 13 percent of the Canadian population with a seropositivity rate twice the national average; second, our analysis of the January 1998 Remis Report showed that it had serious flaws which caused the report to substantially overestimate the cohort size.

72. The next negotiating meeting was held in Vancouver on May 6, 1998. I arranged for Dr. Anderson to speak to the assembled group which he did for approximately one hour on the subject of the HCV disease process, treatment and impact. Attached as Exhibit "HH" is a copy of the Points of Record prepared by me and disseminated to all interested parties.

73. Lavigne and I met on May 7, 1998 and mapped out the broad outlines of a compensation scheme. Attached as Exhibit "II" is a copy of my letter dated May 8, 1998 to the Damages Subcommittee on this subject.

74. The cohort size continued to be critical and unresolved. It was proposed that in the absence of reliable epidemiological information, a national advertising campaign should be undertaken to locate and determine the number of class members. Attached as Exhibit "JJ" is a copy of my letter to Lavigne dated May 8, 1998 on this subject. I asked him to chair the joint committee with the FPT Governments on this subject and to have a report prepared for the June 3, 1998 meeting.

75. The assertion by the FPT Governments that the ceiling of \$1.1 billion could not be exceeded yet it could be lowered was a difficult context within which to negotiate. The Negotiating Committee had to determine whether the \$1.1 billion was sufficient. If it was, our negotiating strategy took us in the direction of thrashing out settlement terms, whereas if we could not fit within the \$1.1 billion envelope, we needed to find additional funds. Attached as Exhibit "KK" is a copy of a fax dated May 15, 1998 to Strosberg and Lavigne attaching my memo on this subject.

76. The possibility of a no-fault compensation scheme continued to pervade the negotiations. For example, the Hepatitis C Society of Canada had been pushing this no-fault initiative and had met with the FPT Ministers of Health in Ottawa on May 14, 1998. On May 19, 1998, Prowse wrote a letter to me, a copy of which is attached as Exhibit "LL", in which he noted "... the question of the extent of any no-fault basis for compensation and the method of compensation are the subject of our ongoing negotiations". In my estimation, a no-fault compensation scheme would be a disaster for the class members that we represented and it was most important that we keep making progress towards settlement. I had some private discussions with Whitehall pertaining to a compensation package and reported this by letter to Strosberg and Lavigne on May 21, 1998, a copy of which is attached as Exhibit "MM".

77. Limitation periods were running against claimants in those provinces which did not have tolling provisions in class proceedings legislation. Hence, a deal was brokered with the FPT Governments that they would toll the limitation periods if we suspended our litigation

demands for documents and examinations for discovery. Attached as Exhibit "NN" is a copy my letter dated May 21, 1998 to the Coalition on this subject.

78. Throughout this time the Class Size, Disease Modelling and Damages Subcommittee had been meeting frequently and, in particular, with Dr. Anderson, to acquire the information necessary to develop a general damages matrix.

79. In order to achieve a breakthrough on the compensation package, Strosberg, Lavigne and I drafted a settlement proposal. Attached as Exhibit "OO" is a copy of my letter dated May 28, 1998 to Whitehall and Prowse proposing settlement terms. Whitehall, Prowse and I had a conference call pertaining to this letter prior to the June 3, 1998 negotiating meeting in Ottawa. They indicated that it was a good starting place although there were several, if not many, areas of difference.

80. On June 3, 1998 there was a further negotiating meeting in Ottawa which approximately 24 lawyers attended. The primary subject was the tabling of our draft settlement proposal. Attached as Exhibit "PP" is a copy of my letter dated June 5, 1998 providing the parties with a copy of the Points of Record. A further negotiating meeting was scheduled for June 30, 1998 in Ottawa.

81. In my view, negotiations were simply not proceeding swiftly enough and it was important to get a smaller group including Strosberg to see if we could break some of the log jams. Attached as Exhibit "QQ" is a copy of my letter dated June 4, 1998, to Whitehall, Prowse,



Strosberg and Lavigne proposing a meeting of the five of us on June 12, 1998 at Strosberg's office in Toronto.

82. At this time I was of the view that the biggest stumbling block to settlement was the differing assessment of the size of the true risk of the \$1.1 billion being exhausted. The FPT Governments advised that our demands would not fit within the envelope. My own analysis was to the contrary and I raised with Strosberg and Lavigne the proposal that the claimants take on the risk rather than reduce our demands. A long conference call was held on June 4, 1998 with our Coalition in which I articulated this idea.

83. Another major stumbling block was the lack of information we had about our claimants. Although my firm had conducted interviews and we had a questionnaire for each new claimant to fill out, this information was largely anecdotal and did not provide the necessary socio-economic information to properly build a detailed basis for assessing appropriate levels and awards of compensation. We canvassed several possibilities, including a questionnaire to be sent to infected persons across the country. A joint meeting of doctors took place on June 19, 1998 in Ottawa to try and iron out some of these problems. Although progress was made, there was unsatisfactory medical and socio-economic data on which to base a compensation plan.

84. On June 13, 1998, Lavigne, Savonitto, Strosberg and I met with Whitehall and Prowse in Toronto. This meeting was fruitful. We promised to provide a settlement proposal to the FPT Governments before our next negotiating meeting in Ottawa on June 30, 1998 and we raised the subject of the claimants taking on the risk. They said they would consider that but

they asserted that the Governments would retain a political risk regardless. We also took the position that the investment income on the trust monies should be tax-free in the event that class members took on the risk. They said that such revenue might be given tax-free treatment but the FPT Governments were very concerned about the prospect of class counsel recovering up to one-third of any settlement amount including any tax savings and, therefore, class counsel fees would have to be constrained. It came as no surprise me that the FPT Governments wanted to make class counsel fees one of the negotiating issues. This was the first of several occasions on which the FPT Governments insisted that a feature of any settlement must be a waiver of a percentage based class counsel fee.

85. I felt that we could not rationally deliberate class counsel fees until a settlement was concluded or nearly concluded. However, I did signal to Whitehall that I was prepared to compromise on the issue of my entitlement to class counsel fees under my contingency fee agreement. What did come as a surprise was the public manner in which Cyrus Reporter, a spokesperson for the Federal Minister of Health, raised the issue some considerable time later. All parties had agreed to a "blackout" on all matters pertaining to the negotiations. Nevertheless, Mr. Reporter advised the press that the Federal Minister of Health had instructed his negotiators not to agree to a "contingency fee" for class counsel under any circumstances.

86. Strosberg, Lavigne and I worked out a settlement proposal to be provided to the FPT Governments prior to our next negotiating meeting.

87. On June 18, 1998 I had a lengthy telephone call with Whitehall during which he advised me that there was a new epidemiological study pertaining to class size and if the estimate of cohort size was severely reduced, the \$1.1 billion would be off the table. This confirmed the concerns I had for some time. The next day I learned through the press that the author of a new LCDS study had announced that the cohort size was likely 6,000 to 12,000 and not 22,000. A spokesman for the Federal Minister of Health was quoted as saying that the FPT negotiators were never given a mandate to automatically offer the full \$1.1 billion rather, "The offer was to spend up to \$ 1.1 billion. So the revised estimates will be an issue that the negotiators will have to take into account." Attached as Exhibit "RR" are copies of two newspaper reports dated June 19, 1998. In addition, the Hepatitis C Society of Canada and the Canadian Hemophilia Society were advocating that given the much lower cohort size, all HCV sufferers should be compensated. In my estimation, our job of keeping, let alone enhancing, the \$1.1 billion for our class members was now much more difficult. We would have to cope with the notion that the original offer was too generous and our claimants could not expect improved compensation because they were fewer in number. We also had to deal with the possibility that the \$1.1 billion would be made available to all infected persons on a no-fault basis.

88. Strosberg, Lavigne and I employed the strategy that we "damn the torpedoes" and I advised the FPT Governments that we would immediately go into litigation mode if they attempted to reduce the \$1.1 billion offer. I conveyed this position to Whitehall and Prowse. The FPT Governments agreed to keep negotiating the \$1.1 billion dollar offer without conceding that all of that sum would be necessary to settle our class actions.

89. On June 22, 1998, I provided a copy of our proposal to Whitehall and Prowse under the cover of a letter marked Exhibit "SS". We proposed two options, one with the claimants taking the risk of insufficiency and the other with the FPT Governments accepting the risk of insufficiency.

90. On June 22, 1998, I had an extensive telephone conference with Prowse and Whitehall during which we discussed the socio-economic profile of the cohort of class claimants and we concluded that we needed more information before we could finalize a settlement package. Initially we worked with both Federal LCDC and British Columbia Ministry of Health personnel who recommended the British Columbia Centre for Excellence in HIV/AIDS ("CFE") conduct a survey. This task became very complex and extraordinarily time-consuming.

91. Given the frailty of the whole situation at this time, I felt it was very important that we needed to have the hemophiliacs who were to share in the \$1.1 billion negotiating at the same table. I telephoned Tough and met with her approximately a week later in Ottawa and we agreed to try to work together to resolve the conflicts between our respective cohorts. I reported this to Whitehall and Prowse who strongly preferred a joint course of action between our respective groups.

92. By that time I had been informed by Whitehall that it was unlikely that they would be able to respond to our settlement offer at the June 30, 1998 meeting in Ottawa. Attached as Exhibit "TT" is a copy of my facsimile dated June 25, 1998, proposing an agenda for the meeting.

93. I continued to have discussions with Prowse and Whitehall prior to the June 30, 1998 meeting on issues such as economic losses including income losses, future care costs and death claims.

94. Attached as Exhibit "UU" is a copy of my letter dated July 3, 1998 to the Coalition of lawyers reporting on the June 30, 1998 negotiating meeting enclosing a copy of the Points of Record prepared by me. It was my opinion that the counter proposal made by the FPT Governments was unacceptable but progress was being made.

95. On July 9, 1998 I had an extensive telephone conference with Whitehall and Prowse during which they proposed a new counter offer. The tenor of the discussion at times became quite acrimonious with both sides alleging how disappointed they were with the position of the other. It was during the course of this call that I became thoroughly convinced that the only real chance we had of settling this case was if we could persuade the FPT Governments to let the class members take the risk of insufficiency. Attached as Exhibit "VV" is a copy of a letter dated July 13, 1998 to the Coalition.

96. On July 14, 1998 I had a conference call with Prowse and Matthews. Prowse informed me that the Ministers of Health were meeting on September 13, 1998 and this was a critical date. He wanted to know whether we were coming together or whether the negotiations were falling apart. I indicated to him that I anticipated the response to the British Columbia survey of the British Columbia class members would be generally benign and that this should provide some comfort to the FPT Governments in compromising on several fronts.

97. There were no formal negotiations during the latter part of July and the first half of August, 1998. However, during that time the following occurred:

- (a) Matthews worked with Prowse, Whitehall and their clients to organize the socio-economic survey which was needed to advance negotiations. In July, 1998 we obtained court approval to advertise the certification and to communicate with class members for the purposes of the study;
- (b) the CRC filed for protection under the *Companies Creditors Arrangement Act* (the "CCAA") and Blair J. of the Ontario General Court granted an order staying all litigation, including this case, against the CRC. This development was very unhelpful and changed the complexion of our case. It put at risk our ability to proceed with litigation against the CRC including much-needed document production and examination for discovery evidence, and, of course, our ability to execute against the assets of the CRC;
- (c) CC&A and Lemer were appointed counsel to the BC class members in the CCAA proceedings. Those proceedings revealed that the CRC would only have approximately \$75 million in assets against which all claimants could execute and the claims of our class members, therefore, if successful, would only be worth cents on the dollar against the CRC. I asked Lemer to take the role of protecting the interests of the BC class claimants who would or could be affected by this process launched by the CRC while I concentrated on the negotiations with the FPT Governments. CC&A rendered a relatively small account to the Monitor and were paid fees of

\$19,770.50. The time spent for which we have been reimbursed has been excluded from the work-in-progress pertaining to this class-action.

**August - December, 1998**

98. By mid-August, 1998 I had resumed conferring with Whitehall and Prowse on matters pertaining to possible settlement. Unfortunately, the parties were still a considerable distance apart and pressure was mounting. Attached as Exhibit "WW" is a copy of my letter dated August 21, 1998 to the Coalition. Whitehall advised that he had retained actuaries to cost our latest offer and I retained Jack Levi ("Levi"), a highly respected Vancouver actuary with Eckler Partners Ltd., to advise us. At the same time, Strosberg retained Murray Segal ("Segal"), a highly respected Toronto actuary also with Eckler Partners Ltd., to advise us.

99. I conferred with Whitehall on August 21, 1998 and arranged an informal meeting for October 15, 1998 between their accounting and actuarial advisors, KPMG, Levi, Segal and a very small group of negotiators including me. I had been advised by both Whitehall and Prowse that our demands would not fit within the \$1.1 billion envelope and the FPT Governments were not willing to accept any risk that the amount of compensation and benefits paid to the class members would exceed \$1.1 billion. The purpose of the meeting was to get the accountants and actuaries together to see if we could find some common ground on this front.

100. On September 10, 1998, I met again with Whitehall. Although the meeting was productive, we were still "miles apart" and I again urged him to reconsider our proposal that the FPT Governments guarantee the \$1.1 billion and the class claimants would except the risk of

insufficiency. Attached as Exhibit "XX" is a copy of my letter dated September 11, 1998, to the Coalition updating them on this and other matters.

101. On September 17, 1998 we held a conference call of the Coalition and brought them up-to-date on my conversations with Whitehall and Prowse. As a result of that conference call I wrote a letter dated September 18, 1998 to Whitehall with a copy to Prowse, a copy of which is attached as Exhibit "YY". At paragraph 5 of my letter I set a target date of mid-October to determine whether there was any realistic prospect of settling the matter since, in my opinion and in spite of a prodigious amount of work being done on both sides of the table, I did not see "any settlement light the end of the tunnel".

102. Whitehall continued to assert that the FPT Governments could successfully defend the case with the policy defence. Accordingly, I had Matthews and Lemer both research this issue taking into account the findings of the Krever Commission and the partial production of documents by the Federal Crown. I concluded that the policy defence constituted a formidable barrier against us. Matthews' memorandum of law was distributed to the Coalition. Partly because of this concern, we promoted the establishment of the Hepatitis C Emergency Program about which I wrote in my letter of September 21, 1998 to Whitehall and Prowse, a copy of which is marked Exhibit "ZZ". Our purpose was to start payments to class members out of the \$1.1 billion which we believed would improve our chances of an overall settlement.

103. During this time we were also concluding arrangements for the British Columbia Survey to be conducted, including reviewing the survey questions drafted by CFE, negotiating



a contract with CFE and the Blood Recipient Notification Program. I arranged for weekly conference calls to get an update from CFE on the progress of the survey. On some occasions as many as 30 people participated in these weekly conference calls.

104. On October 15, 1998, the KPMG representatives met with Levi and Segal along with a small group of lawyers from both sides of the table. The actuaries exchanged assumptions underlying their respective costing analysis and it became clear why we were "miles apart". The KPMG analysis was predicated on medical modelling that we did not believe reflected the profile of our class. In the opinion of class counsel, we needed to find an independent group to provide medical modelling both sides could live with. To this end, the Coalition agreed to the CASL undertaking a study of the medical modelling with a budget of approximately \$100,000 to come from the settlement monies. Attached as Exhibit "AAA" is a copy of my letter dated October 20, 1998, on this subject along with a copy of my letter dated October 30, 1998.

105. I became more and more convinced as time went on that as long as the FPT Governments remained on the risk, they would require such a large buffer between the reasonable actuarial calculation of the claims and the ceiling of \$1.1 billion, that settlement would never be achieved. During our October 15, 1998 meeting, I again urged the FPT Governments to let the claimants assume the risk of the settlement funds being insufficient. After this meeting I received a letter from Whitehall dated October 15, 1998, a copy of which is attached as Exhibit "BBB", indicating that this idea of who would share the risk would be explored further.

106. Attached is Exhibit "CCC" is a copy of my letter dated October 23, 1998 to the Coalition. The purpose of this letter was to obtain a consensus of the Coalition that the claimants accept the risk of insufficiency. The letter also addressed the two areas where our views diverged widely from those of the FPT Governments, namely, loss of income and support, and care costs. Attached as Exhibit "DDD" is a copy of my letter dated October 27, 1998 to Strosberg proposing that the class members take the risk of insufficiency. Strosberg and I spoke about this matter on October 28, 1997 and agreed that we should vigorously assert a proposal that the class members accept the risk of insufficiency.

107. A small meeting was arranged for November 9, 1998 with Whitehall, Prowse, Strosberg, Lavigne and myself in Ottawa to try and conclude negotiations. In preparation for this meeting and a new settlement proposal, Matthews and I spent many hours with Anderson and Levi on medical and actuarial issues pertaining to the modelling and costing of our proposal. In addition, commencing in late October, 1998 we began receiving preliminary data from the BC Survey which confirmed, by and large, that health and socio-economic circumstances of our class members were relatively benign.

108. On November 3, 1998 I had an extensive meeting with Tough who was in Vancouver. The purpose of the meeting was to determine whether we could bring the two groups together to strike a deal. During the course of that meeting, we telephoned Whitehall to discuss harmonizing our negotiations. After this, the transfused classes and the hemophilia classes worked together to conclude negotiations.

109. Attached as Exhibit "EEE" is a copy of a letter from Whitehall dated November 2, 1998, confirming his instructions to pursue negotiations based on the class members taking the risk of any insufficiency. We finally achieved the desired result on this issue.

110. On November 8, 1998, Matthews and I met with Strosberg, Lavigne and Savonitto in Ottawa. We refined our approach and compromised on a few of our demands in preparation for our meeting with Whitehall and Prowse the next day which proved fruitful.

111. Attached as Exhibit "FFF" is a copy of my letter dated November 16, 1998, serving a settlement proposal based on the class members accepting the risk of insufficiency. Attached as Exhibit "GGG" is a copy of a response from Whitehall dated November 18, 1998. The FPT Governments still had very serious concerns with our proposal. Strosberg, Lavigne, Savonitto, Matthews and I met again with Whitehall and Prowse on November 19, 1998 and we were able to resolve many of our differences. Attached as Exhibit "HHH" is a copy of my letter dated November 20, 1998 to Whitehall and Prowse enclosing a further offer stemming from our negotiating meeting on November 19, 1998. By the end of November, Tough had ironed out most of the differences pertaining to the hemophiliac group and she was "in sync" with our latest proposal. After this date, the negotiations with the FPT Governments were conducted by the solicitors of record in the class actions, namely, myself, Strosberg, Lavigne, Savonitto and Tough (the "Class Counsel").

112. On December 2, 1998 Class Counsel met with Whitehall and Prowse and ironed out several further differences. On December 2, 1998 Strosberg wrote to Whitehall and Prowse

enclosing the draft settlement agreement which we felt reflected an agreement on all major issues although a few minor issues needed to be addressed and ironed out.

113. Attached as Exhibit "III" is a letter from Whitehall dated December 8, 1998 which notes in the penultimate paragraph that he enclosed a further draft proposal with substantive changes from our proposal. On December 9, 1998, a further conference call was held with Class Counsel to devise further litigation strategies to overcome the differences. It was agreed that we needed an immediate face-to-face meeting to resolve these differences. Attached as Exhibit "JJJ" is a copy of my letter dated December 9, 1998 identifying the major and minor issues which still divided the parties. One of these issues was a demand by Ontario and Quebec for a full release of the CRC which, in the opinion of Class Counsel, was a deal breaker without substantial additional compensation being offered for such a release.

114. Further face-to-face discussions were held with the FPT Governments and matters were resolved including the addition of \$18 million being added to the settlement funds for a release of the CRC. A Framework Agreement came into being on December 18, 1998. As part of the negotiated Framework Agreement, the FPT Governments insisted on a provision that before the FPT Governments would seek the necessary approvals by their respective Treasury Boards, class counsel had to agree not to seek class counsel fees based on a percentage of the negotiated settlement amount.

January 1999 - June 1999

115. Many issues needed to be addressed in order to progress from the Framework Agreement to a final agreement which could receive court approval, including:

- (a) drafting a formal agreement;
- (b) advertising the proposed settlement;
- (c) having the agreement receive Treasury Board approval across Canada and be signed by all parties;
- (d) conferring with parties who had an interest including the Public Trustees or their equivalents; and
- (e) preparing for the Court approval applications.

Drafting the Agreement

116. Drafting an agreement from the Framework Agreement gave rise to a new set of negotiations. In retrospect, there was as much work left to do as we had already done.

117. Strosberg's firm drew the first drafts which was revised during days of meeting between myself, Matthews, Lavigne, Savonitto, Tough, Strosberg, Peterson and Speight.

118. The FPT Governments retained McCarthy Tetrault to act for them on the drafting of the final agreement. These negotiations involved the following:

- (a) many days of meetings between McCarthy Tetrault commercial lawyers, including tax lawyers and others, and a drafting subcommittee of the Coalition and representatives of the FPT Governments. Matthews

participated in each of these meetings on behalf of the class members of this case;

- (b) negotiating meetings between the Class Counsel, the FPT Governments and McCarthy Tetrault to resolve disputes which arose; and
- (c) consultations with Dr. Anderson, Dr. Morris Sherman, Levi and Segal pertaining to the details of the compensation provisions.

119. Although the framework agreement was initialled in December, 1998, several issues arose during the drafting of the formal agreement, some of which had the potential to crater the deal. The most significant of those were as follows:

- (a) **Interest Rates.** In the Framework Agreement the parties had agreed to a rate of interest equivalent to the long-term Government of Canada Bonds. In March of 1999 Whitehall advised me that this issue had to be revisited. Attached as Exhibit "KKK" is a letter dated March 31, 1999 from Whitehall to me, the penultimate paragraph of which indicated that the FPT Governments were only willing to pay interest at the Treasury Bill rate. Attached as Exhibit "LLL" is a copy of a letter dated May 5, 1999 from Strosberg to Whitehall and Prowse in which Mr. Strosberg conveyed the position of the Class Counsel that the position of the FPT Governments on interest rate was "utterly unacceptable". The Federal Government provided its response in a letter dated May 6 1999, a copy of which is marked Exhibit "MMM". This issue was resolved in a favourable fashion to the class members when the Federal Governments agreed to pay their

8/11 upfront so that this portion of the Trust Fund could be invested in Real Rate of Return Bonds which would yield an attractive interest rate:

- (b) **Release Language.** The negotiations surrounding the release language was protracted and difficult because the FPT Governments originally demanded exceedingly broad release language. Class Counsel were quite simply not prepared to have the clients sign what was, in effect, a general release of all claims against the FPT Governments, and Canadian doctors and hospitals. This issue required lengthy negotiations with the FPT Governments and among the members of the Class Counsel because of differences between provincial comparative fault legislation and jurisprudence. A compromise was finally reached and this issue was favourably resolved without the claimants being required to sign a general form of release; and
- (c) **The Definition of Blood.** In June of 1999 the FPT Governments advised that they wanted the definition of Blood expanded to include the list of excluded products which is appended to the certification order. This expanded definition would have increased the size of the class by an unknown and unascertainable factor because of the very common usage of those excluded products and the difficulty or impossibility of determining whether they can or have transmitted HCV to Canadians. The FPT Governments were adamant that they be included. The Class Counsel was adamant that they not be included and that this would be a "deal

breaker" if the FPT Governments persisted. The issue was favourably resolved when the FPT Governments dropped this demand.

120. One of the last issues raised at the time the Settlement Agreement was being finalized was class counsel's request to the FPT Governments to rebate taxes collected on class counsel fees which would have served to reduce the amount of fees being sought by class counsel. The FPT Governments declined. Attached as Exhibit "NNN" is a copy of a letter dated June 10, 1999, from Whitehall to me on this issue.

121. The extraordinarily long and arduous process of hammering out a final and formal agreement ("Settlement Agreement") was concluded, for all intents and purposes, at a final negotiating meeting in Vancouver in early June, 1999 and thereafter the Settlement Agreement received Treasury Board approval and was executed by the parties. Class Counsel laid the final settlement agreement before all three Courts on or about June 15, 1999.

#### Advertising the Proposed Settlement

122. As part of the approval process, notification of the proposed settlement and the procedure for objecting to it had to be communicated to class members. Because of the nation wide class and the complicated nature of the settlement, Class Counsel retained a public relations firm to assist in effectively conveying the message. This included drafting the notice, drafting newspaper advertisements, drafting a plain language brochure and setting up websites. The language of these documents was the subject of further negotiation between Class Counsel and the FPT Governments.



Selection of the Administrator and start-up costs of the Administrator

123. Class Counsel were of the view that an administrator had to be retained as soon as the Settlement Agreement was in final form so that there would be uniformity of response to hundreds if not thousands of inquiries and work could get started to pave the way to pay claims as soon as court approval was obtained. Prior to commissioning the administrator to start work and incur start-up costs, I had conversations with Prowse and Whitehall which led me to believe that the FPT Governments would agree to pay the "start-up" costs of the proposed administrator prior to court approval of the agreement and court approval of the appointment of the administrator.

124. I participated heavily in the selection process for an administrator to be recommended to the courts and the negotiations leading up to the terms of appointment of the administrator (Schedule 3 of the October 28, 1999 order of this Court approving the settlement, the "Order"). Both the selection process and negotiating the terms of appointment were complicated and time-consuming.

125. Once selected, and under instruction by Class Counsel, the proposed administrator rented space, hired employees, acquired a 1-800 number, set up a website, etc. According to the evidence of Mark Rambin, the manager of the proposed administrator, given in evidence before Mr. Justice Winkler, the call centre fielded 2,800 telephone calls of which 400 were in French, received 20,000 hits on the WebSite and distributed 2500 brochures in English and French. These start-up costs mounted very quickly and when we raised this issue with the FPT

Governments in mid-July, 1999, we were told that the FPT Governments were not prepared to pay for the start-up costs.

126. I raised this issue again with Whitehall and Prowse in August, 1999 and was initially advised that the FPT Governments were simply not prepared to commit to the start-up costs. Class Counsel were not prepared to instruct the proposed Administrator to "down tools" and the start-up costs continued to mount. One of the solutions I proposed to Class Counsel was that Class Counsel ourselves borrow the necessary money to pay the start-up costs of the proposed administrator because we had committed to thousands of class members that there would be no undue delay in making payment claims.

127. Attached as Exhibit "OOO" is a copy of my letter to Whitehall dated August 24, 1999, which notes, among other things, that the start-up costs for the administrator would soon reach \$1,000,000. On September 1, 1999 Whitehall called me to advise the issue had been discussed with the Provincial Governments but had still not been resolved. Finally, Whitehall called me to advise that a partial solution was at hand, namely, that the Federal Government would agree to pay the their share of start-up costs but only to a cap of 8/11 of \$1.2 million. Attached as Exhibit "PPP" is a copy of a letter dated September 8, 1999 from Whitehall to me setting forth this partial solution. Although Class Counsel agreed with this partial solution, Class Counsel remain exposed for 3/11 of the start-up fees up to \$1.2 million and for all of the administrators fees and disbursements in excess of \$1.2 million unless and until the appointment of the Administrator is approved by all three Courts. As of the date of affirming this affidavit, the Quebec court has still not ruled on the appointment of the Administrator. Attached as Exhibit

"QQQ" is a copy of a letter dated November 19, 1999 from the administrator to me showing that their total start-up costs to date amount to \$836,722.

128. In addition, I also participated in the selection of and negotiation of the terms of appointment of the Trustee (Schedule 4 of the Order), the deliberations leading up to Investment Guidelines (Schedule 5 of the Order), the terms of appointment of the Investment Manager (Schedule 6 of the Order) and the terms of appointment of the Investment Consultant (Schedule 7 of the Order).

#### The Application for Court Approval

129. Throughout the negotiations and the finalization of the Agreement, Matthews and I were also working with CASL, Levi, Dr. Anderson and CFE. As noted above, CASL prepared the medical model, Dr. Anderson was providing us with advice as to the disease history and treatment, and CFE conducted the British Columbia Survey pertaining to the socio-economic and overall health status of the British Columbia class members. Levi had been providing us with actuarial assistance during the negotiations but his report as to the soundness of the Fund could not be written before the work was done on the foremost assumptions of cohort size, medical modelling and the socio-economic profile of the class cohort. Matthews and I spent an enormous amount of time with these individuals and groups discussing their work, providing direction as to the areas most pertinent to the negotiations, and urging them to complete their tasks as quickly as possible. After the work was complete, further time was spent digesting the results and discussing them with the authors so that it could be understood by ourselves and Levi and incorporated in his report. In particular, Matthews spent many hours reviewing the CASL report

which is a very technical and dense document, and coordinating conference calls between Levi and Murray Krahn, the primary author of the CASL Report.

130. In addition to the main assumptions discussed above, there were many other assumptions which had to be addressed and a factual basis researched for Levi. Matthews and Lemer undertook most of this work with assistance from members of the Coalition. Those areas which required research include:

- (a) costs of the treatment covered by the Agreement including what is paid for by provincial pharmacare and drug plans;
- (b) costs of tracebacks and negotiations with the CBS; and
- (c) loss of services and family configurations.

131. A great deal of work was necessary to prepare the material for court approval. Fourteen different affidavits were prepared including very extensive affidavits of Matthews, Dr. Anderson and Lemer.

132. A very considerable amount of time was spent preparing for the approval hearing including preparing written submissions. Because of the inextricably linked nature of the approval hearings in the three jurisdictions, I asked Lemer to attend at the Ontario hearing and to report to me on a daily basis. I retained a senior counsel in Montreal, Gordon Kugler, to attend the Quebec hearing and report to me on a daily basis.

133. Class Counsel determined that the orders of the Courts would be critical to the overall functioning and implementation of the settlement. Strosberg's office prepared a draft order and as it was to be the basis for the British Columbia order, Matthews and I spent a great deal of time reviewing and revising the proposed Ontario order. This process also included representatives of the FPT Governments, parties who obtained standing in Ontario and the CRC, the third party hospital and doctors and the Public Trustee in British Columbia. The Ontario proposed order went through many drafts prior to the approval hearing on the August 18, 1999. Once that order was in near final form, I circulated a similar but not identical British Columbia order which also went through several iterations before the approval hearing.

134. Another area that consumed an enormous amount of time was and is drafting protocols. As an example, Matthews travelled to Toronto and Ottawa on several occasions to meet with Class Counsel and the administrator on this subject. Attached as Exhibit "RRR" is a copy of a preliminary list of protocols that are required in order to implement the compensation plans. The most recent meeting Matthews attended on this subject was in Ottawa on November 7, 8, and 9, 1999.

#### **Post Approval Hearing Issues**

135. As a result of exchanges between Class Counsel and Mr. Justice Winkler during the course of the approval hearings, it became clear that Mr. Justice Winkler was not satisfied that claims by persons who opt out of the settlement should be paid out of the settlement funds, at least not in excess of the amount these persons would have been entitled to had they remained members of the class. Hence, Class Counsel conferred and hit upon the idea of finding an

insurer who would take on this risk for a premium equal to the amount that our actuaries had assumed would be needed to protect against this risk, namely, \$10 million. Although this initiative was spearheaded by Tough and Strosberg, I was kept closely advised and brought into the discussions by telephone conference.

136. Once the reasons for judgment of Mr. Justice Winkler were handed down and with which Mr. Justice Smith concurred, a new round of arduous negotiations ensued with the FPT Governments on the "modifications" referred to by these two judges. These negotiations included a face-to-face meeting in Vancouver with all parties present.

137. On the issue of handling opt out claims, I informed all parties and the insurers of the British Columbia opt out experience. Two insurers were willing to accept the risk of insuring all opt out claims based, in part, on this experience. Attached as Exhibit "SSS" is a copy of my letter dated September 2, 1999, to Tough dealing with our opt out experience in British Columbia. Attached as Exhibit "TTT" is a copy of my memorandum dated October 1, 1999 on the subject of opt outs. Attached as Exhibit "UUU" are copies of my letters dated October 15, 1999 and October 18, 1999, to Whitehall which formed the basis of our agreement on this issue.

138. On the issue of thalassemia sufferers being included, attached as Exhibit "VVV" are copies of two memoranda dated September 23, 1999 to all parties indicating the reasons why, in my opinion, they were already included in the Plans.

139. The third issue pertained to the "surplus" which was a highly political issue. Strosberg was strongly of the view that the FPT Governments would eventually accept the modification proposed by Mr. Justice Winkler and Mr. Justice Smith and I deferred to Strosberg's political judgment which proved to be correct.

140. Once the issues pertaining to the modifications had been addressed, the Ontario draft order needed to be finalized. Again, this was very time consuming and included a day long session which I attended in Toronto before Mr. Justice Winkler and approximately 30 lawyers. The order went through many drafts before it was finalized on November 10, 1999. Attached as Exhibit "WWW" is a copy of my facsimile to Class Counsel dated November 10, 1999, proposing virtually the last wording change. Although the British Columbia Order was based on the Ontario order, it also went through many drafts and was the subject of a one-half day hearing before this court.

#### Communications and Instructions from the Representative Plaintiff

141. Matthews flew to Prince George to interview Endean so as to ensure that we were both comfortable with her acting as the representative plaintiff. After receiving the benefit of independent legal advice and advice from friends and family, so I am informed, she agreed to act as representative plaintiff and she signed the fee agreement which is marked Exhibit "B". From that time forward, Matthews and I have communicated very frequently with Endean and have often sought the benefit of her opinion on a myriad of issues dealing with this action. When appropriate we have sought and received instructions from her.

### Communications with Class Members

142. CC&A has reported regularly to class members since the inception of the action, primarily by way of reporting letters sent out approximately at 6 month intervals. CC&A also has a dedicated toll free telephone number and a website. It would not be an exaggeration to say that lawyers and staff at CC&A have met in person with hundreds of class members and potential class members and have received thousands of telephone calls during the course of this action.

### Press Relations

143. HCV matters in general, and this litigation and settlement in particular, have attracted a great deal of public attention. I have fielded literally hundreds of calls from the press since the time this matter was initiated in the spring of 1996. I have been on several radio programs and have been interviewed on television several times. I considered relations with the press to be important because:

- (a) the press was an ally at the outset in generating a better understanding of the needs and aspirations of the class members for recognition and fair and adequate compensation for their plight;
- (b) many of the interest groups, some of whom had an interest that conflicted with the interests of the class members, used the press frequently and effectively;
- (c) many class members followed the press carefully and if misinformation was published they became agitated and confused and this had to be put right; and



(d) the highly politically charged nature of the issue made it particularly press worthy and there was virtually no escaping the press.

One of the issues that received a great deal of press attention was the fees sought by Class Counsel. Although some commentators and a spokesperson for the Minister of Health have described the class counsel fees sought as being "excessive", when I publicly defended class counsel fees, the public reception I received was quite different. Attached as Exhibit "XXX" is a letter dated August 9, 1999 to Class Counsel attaching a transcript of a radio interview with Peter Warren of radio station CKNW.

#### The Fee Agreement and Individual Fees

144. I asked new class members who approached my firm to sign an identical fee agreement to that which was signed by Endean. I continued to do this until the FPT Governments made their initial offer of \$1.1 billion by which time approximately 240 class members had signed fee agreements. Some class members who registered with my firm had not signed fee agreements during this period of time. Nevertheless, all class members who registered with my firm were treated alike.

145. After the formal settlement agreement had been concluded in mid June, 1999, I advised all class members in writing that Class Counsel had agreed to forego a claim for a percentage of the settlement amount and agreed to seek a lump sum payment for Class Counsel fees to be approved by the courts in each of Quebec, Ontario and British Columbia.

146. At the same time I advised all British Columbia class members that we were striving to make the administration of the compensation plan as simple and as user-friendly as possible with a view to limiting the need for individual HCV claimants to retain lawyers to assist them in applying for compensation. I have stressed this point in my meetings with groups of class members, and in my discussions with interests groups, the Public Trustee and the press. I view this as one of the duties owed by Class Counsel to the class membership as a whole. Now that I have been appointed as a member of the Joint Committee, I believe that this particular duty is heightened. To this end, I have decided that CC&A should not and will not act for any individual HCV claimant.

147. As part of the commitment to limit the need for individual class members to require legal services to assist them in their individual claims, Class Counsel have taken the following steps:

- (a) developed claims forms, procedures and protocols which are as clear and simple and as possible;
- (b) negotiated a specific requirement that the administrator assist claimants in the completion of claims forms and that the administrator attempt to resolve any disputes with claimants. This mandate is set forth in Section 5.02 (g) of the Settlement Agreement;
- (c) as part of the negotiated terms of appointment of the administrator, Class Counsel required the administrator to dedicate personnel to assist class members or claimants with their inquiries with respect to their claims and

appeals. This is set forth in paragraph 13(d) of the Terms of Appointment of administrator; and

- (d) negotiated terms which require the administrator to respond to all inquiries, written or oral, from class members within thirty days of such inquiry and, unless exceptional circumstances dictate otherwise, the administrator must make a decision on the claims and advise the claimant of the decision no later than thirty days after the receipt of all relevant information. These requirements are set forth in paragraphs 13 (g) and 13 (h) of the Terms of Appointment of Administrator.

**Waiver of a Percentage Fee on the Settlement Amount**

148. Under my fee agreement, Lemer and CC&A were entitled to charge up to one-third of the settlement amount attributed to the British Columbia class action. Quebec class counsel also had a percentage contingency fee agreement with their representative plaintiff. Class Counsel in both the Framework Agreement and the Settlement Agreement have waived their rights to seek recovery of class counsel fees based on a percentage of the settlement amount. Without doubt, in my opinion, the compromise by class counsel of their right to claim class counsel fees on the basis of percentage of any settlement or judgment, which in my case amounted to up to one-third, was a significant concession which assisted the parties in coming to an agreement.

### Added Value

149. Class Counsel added enormous value to the initial settlement offer of \$1.1 billion as follows:

- (a) an additional sum of \$18 million plus interest on this sum from April 1, 1998, pertaining to a release of the CRC;
  - (b) an additional sum of approximately \$80 million pertaining to interest on the \$1.1 billion from April 1, 1998 to September 30, 1999;
  - (c) an additional sum of approximately \$357 million which is the present value of the tax-free accumulation of interest on the settlement funds;
  - (d) an additional sum of approximately \$104 million attributable to the present value of the difference between the Treasury Bill rate of interest and the Real Rate of Return Bond rate of interest on the Federal Government's upfront payment of 8/11 of the Contribution Amount;
  - (e) the receipt of benefits, with one exception, by a class member will not affect the quantity, nature or duration of any social benefits or social assistance benefits payable to class member (the value of this enhancement is incapable of calculation);
  - (f) all payments are indexed annually according to the consumer price index;
- and
- (g) no FPT Government nor any Department of an FPT Government may recover any subrogated interest which in most jurisdictions is customarily pursued (the value of this enhancement is incapable of calculation).

At paragraph 90 of his reasons, Mr. Justice Winkler found the value of the settlement to be \$1,564,000,000 without the benefit of all of the arguments noted above.

### Time and Disbursements

150. To approximately November 20, 1999, CC&A has amassed \$2,595,791 in work in progress in this matter not including fees of \$19,770 billed to and paid by the Monitor of the CRC. Nor does this work in progress include approximately \$30,000 recorded by CC&A on individual claimant files. I will make the dockets available upon reasonable request and upon reasonable undertakings of confidentiality. As at the date of speaking to this application, I will tender to the Court and the parties the most current status of work in progress amassed by CC&A.

151. Much of the time spent by Matthews and me was of a critical nature in either preparing for or attending at numerous court hearings or logged in hard fought negotiations on behalf of all transfused class members across Canada.

152. A history of the disbursements carried by CC&A is attached as Exhibit "YYY". Many of these disbursements have been carried for years. Many but not all of the negotiating expenses incurred by CC&A have been paid but often they have been carried by CC&A for six months. As at the date of speaking to this application, I will tender to the Court and the parties the most current information pertaining to disbursements.

153. At the outset of this litigation our line of credit at CC&A was \$200,000. As at the end of November, 1999 and without any addition of lawyers to the firm, our line of credit is now at \$750,000. In my estimation, most of this increase in our line of credit is attributable to this case. Matthews and I have spent between 50-100% of our time on this matter since it commenced. Kim Graham, the senior legal assistant of the file, has spent between 75% and 100% of her time on the file since it commenced. Caleen Ross, a legal assistant hired in January, 1999 to assist with the workload pertaining to the class members who contacted our firm, spent over 90% of her time on this file until September, 1999.

154. The financial sufficiency of the Trust Fund was critical in obtaining approval to the Settlement Agreement. In my view, it was necessary for class counsel to make a reasonable and balanced estimate of all counsel fees (\$52.5 million) and taxes so as to ensure that the sufficiency of the Trust Fund would not be imperiled and the whole Settlement Agreement put in jeopardy. Without passing judgment on class counsel fees, Mr. Justice Winkler, with whom Mr. Justice Smith specifically agreed on this issue, said in paragraph 129 of his reasons, "I am satisfied based on the Eckler report that the fund is sufficient, within acceptable tolerances to provide the benefits stipulated."

#### Risks Undertaken

155. There were a series of risks confronting class counsel in this matter. The first area of risk was whether the action was worth taking and on what basis. The second area of risk was whether the class-action would be certified. The third area of risk was whether the parties would be able to consummate a settlement. The last area of risk was whether the courts would approve

any settlement. As time passed, class counsel built up an enormous amount of time and a very significant amount of disbursements, all of which was at risk until the last court approved the Settlement Agreement without any material change. Had this risk materialized, class counsel would have wasted nearly two years of time and effort and trial preparation would have been set back by the same amount of time. All parties were well aware of the possibility of this risk materializing. Attached as Exhibit "ZZZ" is a copy of my letter dated March 29, 1999, in which I noted that if the settlement was not approved, "all bets are off" and the FPT Governments would be asserting all affirmative defenses including limitation period defenses. Had any of these risks come to pass, class counsel were painfully aware that our resources would have been depleted and that we would not be in as strong a position to prosecute the trial of the common issues as we were before the negotiations began. Mr. Justice Winkler, with whom this Court agreed, characterized the litigation risks of continuing to trial, at paragraphs 92 and 94 of his reasons, as "substantial," "significant" and "very real".

#### Counsel's Responsibility in This Matter

156. It is difficult for me to express the enormous responsibility in acting as counsel in a matter of this magnitude and dimension. As far as I am aware, the amount of money at issue was and is the largest amount in the history of Canada pertaining to personal injury or death claims. As far as I am aware, the number of claimants is greater than any other personal injury or death claims tort action in the history of Canada. Nor is it possible to overstate the importance of this action to the welfare of the thousands of class members who will participate. The negotiations were by far the most complicated and the most stressful ever undertaken by me. On our side of the table the laws were quite different in the three jurisdictions and so were the

approaches by various class counsel from time to time. On the other side of the table, we had 13 Governments and the CRC to deal with and these interests were very disparate at times.

157. It is my opinion that there was virtually no room for error in judgment in this case and absolutely no room for a lack of resolve. Had the negotiations failed or had the underlying action been lost due to my negligence, I did not have, and as far as I know no lawyer in Canada could have, sufficient professional liability insurance to pay but a fraction of the loss.

158. As far as the certification of the British Columbia class action is concerned, it is my opinion that it was very unlikely that any HCV infected person across Canada would have recovered "a dime" in litigation, had we failed to certify the British Columbia class action.

159. During the last two years approximately, Matthews and I have turned away the vast majority of prospective clients because of the burden of the responsibility and the time required by this matter.

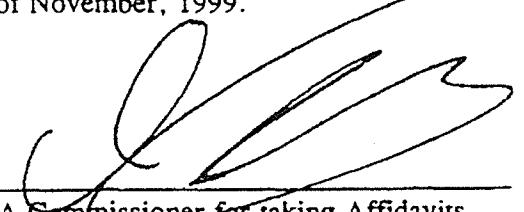
### The Final Product

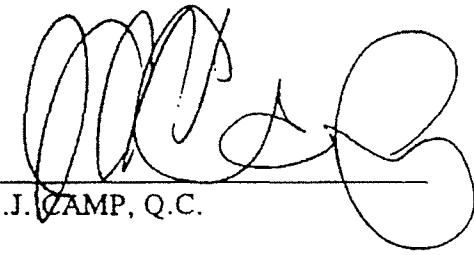
160. The final product that was successfully negotiated can only be described as unique in Canadian litigation history. Mr. Justice Winkler, at paragraph 87 of his reasons, and with which this court agreed, described the settlement as "imaginative" and "forward-looking". It had to reflect the disease process that was transitory yet had potential long-term devastating consequences. It had to treat fairly class members who ranged from being entirely asymptomatic to those who were totally incapacitated. And it had to be pan-Canadian. This aspect permitted



class counsel to negotiate on a "most favoured nations" basis so that, for example, British Columbia class members have substantially greater recovery rights in several areas under the Settlement Agreement than they would have in a court of law in this jurisdiction. Finally, and again quoting Mr. Justice Winkler at paragraph 88 of his reasons, "the negotiations achieved the maximum total funding that could be obtained short of trial."

AFFIRMED BEFORE ME at the City of )  
Vancouver, in the Province of )  
British Columbia, this 25 day )  
of November, 1999. )

  
A Commissioner for taking Affidavits  
for the Province of British Columbia

  
J.J. CAMP, Q.C.

1

**CAMP CHURCH & ASSOCIATES**  
BARRISTERS

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This is Exhibit "A" referred to in the  
affidavit of J.J. CAMP  
made before me on MAY 23 1999

A Commissioner for taking Affidavits  
For British Columbia

FILE REF: 96015/001

April 18, 1996

VIA FAX NO. 682-1283

Singleton Urquhart Scott  
Barristers & Solicitors  
1200 - 1125 Howe Street  
Vancouver, BC  
V6Z 2K8

FAX

Attention: David Butcher

Dear Sirs:

**Re: Hepatitis C Class Action Litigation**

I have conferred with Bruce Lemer on the subject of jointly participating in this litigation with you and your firm. I thought it best to record my thoughts in writing.

I wish to first address the subject of disbursements. I understand that you are hopeful that the Hepatitis C victims can generate sufficient capital to cover off disbursements. I see this as being problematic in several different respects, not the least of which is keeping track of contributions on a case-by-case basis, properly allocating and attributing expenses between various sub-classes and refunding contributions where no value has been received. Bruce Lemer and I both hold the view that the disbursements should be funded by the law firms. This not only simplifies matters but ensures that all clients receive the same treatment regardless of financial resources possessed by that client. Few Hepatitis C victims can afford to raise the necessary funds to properly fund the class action. Furthermore, the law pertaining to contingency fees holds that a fee is more justifiable when the law firm has expended its own financial resources to fund the litigation.

## CAMP CHURCH & ASSOCIATES

This will be complex and complicated litigation. Even the class certification is problematic. As I am sure you know, a class certification application on behalf of persons who received HIV-infected blood was denied in Ontario. Furthermore, the proposed Hepatitis C class action in Ontario is stalled to say the least.

With respect to liability, it is my opinion that there is no one better suited to advance this case than Bruce Lemer. As you know, he has amassed very extensive experience in the tainted blood field and has already resolved many blood related lawsuits on behalf of HIV clients. For my part, as I indicated, approximately three-quarters of my practice is dedicated to product liability cases on behalf of plaintiffs.

With respect to you and your firm, I register a modest concern about the lack of experience in this area. I do wish to record my utmost respect for the reputation enjoyed by your firm in the fields of endeavour where it has expertise. On more than one occasion I have referred clients to your firm because of that expertise and those clients have been very satisfied. On the other hand, there may be a firm culture problem with respect to this litigation. Your firm is simply not noted for having an extensive plaintiffs' practice based on contingency fee arrangements in product liability cases. Rather, your firm has an excellent reputation generally on the defence side, including subrogated actions on behalf of insurers. The primary purpose for registering this concern is that any firm that takes on a commitment of this nature must expect to incur very substantial disbursements and very substantial inventory of time for a very long period of time.

Bruce Lemer provided you with a list of the 19 insurance companies who insured the Red Cross and other potential defendants at various times up to 1986. I assume you have performed a conflicts check for all of these insurers and any others who might have insured the Red Cross and other potential defendants from the 1970s to 1990 and you have satisfied yourself that you and your firm have no conflict of interest.

Having conferred with all of the counsel on the breast implant litigation, it is our best guess that the disbursements associated with this litigation, including the trial on liability in the class action case, will ultimately exceed \$500,000. Secondly, I would expect the firms who undertake this matter to incur a minimum of \$500,000 of otherwise billable time which must be held in inventory. Third, I personally do not expect to have this litigation resolved for several if not many years.

You and your firm bring two substantial benefits "to the table" to use the vernacular. First and foremost, you have many Hepatitis C clients who have already retained you to commence action on their behalf. A percentage of these clients are likely to have viable actions in the relatively short window of time in which the blood

## CAMP CHURCH & ASSOCIATES

authorities may have exposure to liability. Secondly, I am sure that your Hepatitis C clientele reposes confidence in you to ensure that their cases are properly handled and that they will want you to monitor the progress of the class action litigation.

These factors ought to be fairly compensated and it is our proposal that you get a substantial referral fee for any clients that form part of the ultimate class.

One final note. I consider that Bruce Lemer and I have an effective team to properly try this class action case. As you know, my firm had deployed a considerable amount of our legal and paralegal resources to asbestos litigation which is drawing to a close. Hence, the timing is right to redeploy these resources. I anticipate that it will take a minimum of one junior lawyer and two full-time legal assistants in addition to my own time, as the contribution of Camp Church & Associates to our joint efforts. I advise you of this only to indicate the nature and extent of the commitment that I consider necessary on the part of class action counsel.

I cannot leave this letter without commending you and your firm for the efforts that you have expended to date to become educated on this subject and to educate Hepatitis C victims on their legal rights.

Please feel free to give Bruce Lemer or myself a call to discuss this matter further.

Yours truly,

CAMP CHURCH & ASSOCIATES

By:

J.J. Camp

JJC:hp

cc: Bruce Lemer

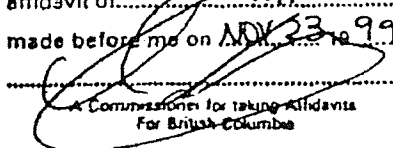
2

CONTINGENCY FEE AGREEMENT

THIS AGREEMENT made as of the 16 day of October, 1997.

Between:

Anita Endean  
2228 Walker Road  
Prince George, British Columbia  
V2K 1J3  
(the "Client")

This is Exhibit "B" referred to in the  
affidavit of J.J. CAMP  
made before me on NOV 23, 1997  
  
A Commissioner for taking Affidavits  
for British Columbia

and:

CAMP CHURCH & ASSOCIATES  
Barristers & Solicitors  
4th Floor, Randall Building  
555 West Georgia Street  
Vancouver, BC V6B 1Z5

and

BRUCE LEMER  
Barrister & Solicitor  
1550 - 625 Howe Street  
Vancouver, BC V6C 2T6

(the "Firms")

The parties agree as follows:

1. The Firms shall represent the Client in litigation arising out of the illness and injury suffered by the Client as a result of the transfusion of blood contaminated by the Hepatitis C virus (the "Case"). The determination of fault in the Case shall be part

of the proceeding brought under the *Class Proceedings Act*, S.B.C. 1995, c.21, known as *Endean v. The Canadian Red Cross et al.*, British Columbia Supreme Court, Vancouver Registry No. C965349 (the "Class Proceeding"), in which the Client will be the representative plaintiff. The determination of the amount of compensation payable to the Client will follow either by way of settlement or payment of compensation or an individual damage action.

2. The Client shall pay the Firms as fees for their professional legal services a percentage of the amount of any settlement or compensation from any source pertaining to the Case or any judgment obtained prior to trial or at trial including prejudgment interest and postjudgment interest (amounts awarded by the Court for interest on the judgment before trial and after trial), but excluding taxable party and party costs (an amount governed by the *British Columbia Rules of Court* that a successful party in a lawsuit can claim to offset legal fees), calculated as follows:

- (a) 25% of the amount of any settlement or compensation from any source obtained before 6 months prior to the first trial date set in the Case; and
  - (b) 33  $\frac{1}{3}$ % of any settlement or compensation from any source or judgment obtained after 6 months prior to the first trial date set in the Case
- (the "Contingency Fee").

The phrase "settlement or compensation from any source" in this paragraph includes any settlement or compensation offered by or negotiated directly or indirectly with the Canadian Red Cross or any Governmental interests in Canada regardless of whether the



Client opts out of the Class Proceeding. The Contingency Fee shall be calculated on any settlement or compensation from any source or any judgment after all case expenses incurred by the Firms have been deducted.

3. If an appeal is taken by the Client or by the defendants from a judgment at trial, the Client and the Firms shall at the time the Appeal is taken decide whether the Firms will represent the Client on the Appeal, and if so, on what basis the Firms shall be paid for legal services provided on the Appeal.

4. Case expenses are those costs incurred by the Firms to prosecute the Case, including the Class Proceeding. Case expenses include court filing fees, photocopy charges, couriers, travel expenses, fees paid to agents, experts and other lawyers.

5. The Client authorizes the Firms to pay case expenses to prosecute the Case as the Firms deem necessary. The Client acknowledges that subject to paragraphs 10 and 13 to 16 inclusive, the Client shall be responsible to pay the following case expenses:

- (a) a *pro rata* share of all case expenses incurred in the Class Proceeding which benefit the Class Proceeding, including case expenses to obtain class certification, case expenses incurred to prosecute the common issues certified by the Court and case expenses incurred by the Client in her role as representative plaintiff. "*Pro rata* share" means that the case expenses will be payable by the Client in the same proportion as recovery by the

Client relative to recovery of all other members of the Class Proceeding;  
and

(b) all case expenses paid for the sole benefit of the Client.

6. In the event of settlement or compensation from any source or judgment being obtained, the Client shall pay the Contingency Fee and any outstanding case expenses from the settlement or compensation from any source or judgment proceeds.

7. The Client authorizes the Firms to receive in their trust accounts on the Client's behalf, any monies to which the Client may become entitled pursuant to a settlement or compensation from any source or judgment, and the Client agrees that the Firms may apply any such monies to pay the Contingency Fee and case expenses.

8. The proceeds of any settlement or compensation from any source or judgment including partial or interim payments, shall be applied to pay all case expenses outstanding at the date of the payment. The Firms shall be entitled to the Contingency Fee calculated by the terms set forth in paragraph 2 on the proceeds of any payment.

9. The Client agrees to pay Goods and Services Tax ("GST") and British Columbia Provincial Sales Tax ("PST") on the Contingency Fee and case expenses.

10. Subject to paragraphs 13 to 16 inclusive, if no money is recovered by way of settlement or compensation from any source or judgment, the Contingency Fee and the case expenses shall not be due to the Firm.

11. Any taxable party and party costs recovered shall be for the sole credit of the Client. With respect to legal services rendered for the recovery of and the collection or execution of taxable party and party costs, the Client shall pay the Firms a reasonable legal fee based on the factors set forth in paragraph 14.

12. The Client shall not negotiate or accept settlement or compensation from any source pertaining to the Case without the express consent of the Firms.

13. The Firms are entitled to terminate the solicitor client relationship created and governed by this Agreement if:

- (a) the Client refuses to follow the recommendation of the Firms that the Client make or accept a specific settlement offer or compensation package which is reasonable in all the circumstances;
- (b) if the Client neglects or refuses to cooperate with the Firms in the prosecution of the Case;
- (c) the certification of the Class Proceeding is overturned on appeal or is de-certified under the *Class Proceedings Act*, S.B.C. 1995, c.21; or

- (d) the Firms are of the view that for any other reason the Case should not be pursued.

14. If the Firms terminate the solicitor client relationship in accordance with paragraph 13(a) or (b), the Client shall pay to the Firms the case expenses and professional legal fees (plus applicable GST and PST) for legal services rendered to the date of termination in accordance with the following considerations:

- (a) the extent and character of the services rendered;
- (b) the labour, trouble and time spent by lawyers, students and legal assistants;
- (c) the complexity of the matter and the difficulty of the legal issues involved;
- (d) specialized skills, experience, knowledge and responsibility required to provide the services;
- (e) circumstances under which the services are rendered;
- (f) the results obtainable if a specific settlement offer had been accepted by the Client; and
- (g) the character and standing in the legal profession of the counsel.

15. If the Firms terminate the solicitor client relationship in accordance with paragraph 13(c) or (d), no legal fees or case expenses shall be due and payable to the Firm.

16. The Client is entitled to terminate the solicitor client relationship created and governed by this Agreement at any time. If the Client terminates the solicitor client relationship before any offer of settlement or compensation from any source has been made by any party and before a judgment, the Client shall pay to the Firms the case expenses outstanding and a reasonable legal fee based on the factors set forth in paragraph 14. If the Client terminates the solicitor client relationship after an offer of settlement or compensation from any source has been made by any party or after a judgment has been obtained, the Client shall pay to the Firms the case expenses outstanding and the greater of the Contingency Fee as set forth in paragraph 2 as applied to any settlement or compensation from any source or judgment obtained by the Client after termination, or a reasonable legal fee based on the factors set forth in paragraph 14.

17. Pursuant to section 38 of the *Class Proceedings Act*, S.B.C. 1995, c.21, the Firms advise that at this time their best estimate is that the expected fee in the Case will not exceed \$150,000. The Firms are unable to provide an expected fee of the Class Proceeding as a whole because the number of class members and their damages are not ascertainable at this time.

18. The Firms will apply to the court for approval of this agreement prior to the fees and disbursements being paid pursuant to section 38 of the *Class Proceedings Act*, S.B.C. 1995, c.21.

19. The Client acknowledges that Firms have recommended that the Client receive independent legal advice on the fairness of this Agreement and to review the Agreement with another lawyer prior to signing.

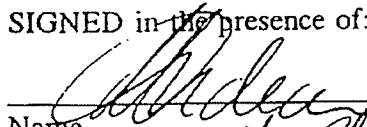
20. The Client acknowledges and confirms that the Client has been advised of the following provisions of the *Legal Profession Act* and the Rules of the Law Society of British Columbia:

- (a) the Client may apply to a district registrar of the Supreme Court of British Columbia within ninety days after the agreement is made or the retainer between the solicitor and the Client is terminated by either party, to have the fairness and reasonableness of this agreement reviewed by a Registrar of the Supreme Court of British Columbia whether or not payment of fees or case expenses has been made;
- (b) upon delivery of a bill for fees, charges or case expenses by the Firm, the Client may apply to a Registrar of the Supreme Court of British Columbia for a review of the bill; and
- (c) the Rules of the Law Society of British Columbia provide that, subject to the Supreme Court approving higher remuneration, the maximum compensation to which a lawyer is entitled in a claim for personal injury or

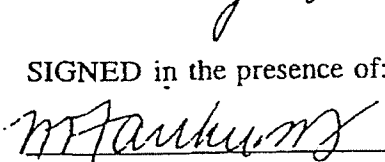
wrongful death of this type is 40% of the total amount recovered. Fees charged by different lawyers vary.

IN WITNESS WHEREOF the parties have signed this Agreement.

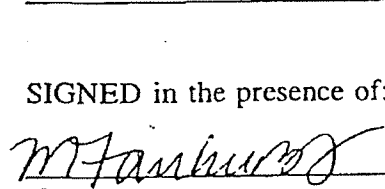
SIGNED in the presence of:

  
Name Anita Endean  
Address 2106 Chi. Place  
Prince George BC V2K 1G9

SIGNED in the presence of:

  
Name CAMP CHURCH & ASSOCIATES  
Address 4th FLOOR, 555 WEST GEORGIA STREET  
VANCOUVER, CANADA V6B 1Z5

SIGNED in the presence of:

  
Name CAMP CHURCH & ASSOCIATES  
Address 4th FLOOR, 555 WEST GEORGIA STREET  
VANCOUVER, CANADA V6B 1Z5  
for Bruce Lemer by permission

3



LEMER KAMBAS  
BARRISTERS & SOLICITORS

SUITE 1550 625 HOWE STREET VANCOUVER, BC CANADA V6C 2T6 / (604) 669-4004 FAX 669-4224

COPY

FILE REFERENCE: 6739

October 8, 1996

Via Legal Alternative

OCT 10 1996

Russell & DuMoulin  
Barristers & Solicitors  
2100 - 1075 West Georgia Street  
Vancouver, B.C.  
V6E 3G2

This is Exhibit C referred to in the  
affidavit of J.J. CAMP  
made before me on Oct 23 19 96

A Commissioner for taking Affidavits  
For British Columbia

Attention: James McMaster

Dear Sirs:

Re: Hepatitis C Class Action

After commencement of the action I proposed that we agree that the limitation period relating to class members would not run from that point until the court's decision on certification. I confirm that in our telephone conversation of October 1 you indicated that the C.R.C. would not agree that limitation periods relating to members of the class be postponed pending the determination of the certification.

Yours truly,

LEMER KAMBAS

Per:



Bruce W. Lemer

BWL/dwj

cc: Ministry of Attorney General  
Attention: D. Clifton Prowse

Department of Justice  
Attention: John Haig

✓ Camp Church & Associates  
Attention: J.J. Camp

4

**COX, TAYLOR**  
*barristers & solicitors / notaries*

THIRD FLOOR - BURNES HOUSE, 26 BASTION SQUARE  
VICTORIA, BRITISH COLUMBIA  
V8W 1H9

TELEPHONE (250) 388-4457  
TELECOPIER (250) 382-4236

ALLAN L. COX, Q.C. (1996)  
RODNEY J.E. TAYLOR, Q.C.  
ASSOCIATE COUNSEL

MURRAY J. HOLMES  
ROBERT T.C. JOHNSTON, Q.C.  
C. EDWARD HANMAN  
FRANK B. CARSON  
L. JOHN ALEXANDER  
WILLIAM MURPHY-DYSON  
JOHN VAN DRIESUM  
SUSAN L. BEACH  
VALORIE F. HENNINGER  
KEVIN M. KITSON  
"LAW CORPORATION"

OUR REF. R466-1\* +lb

YOUR REF.

January 16, 1997

Via facsimile: (604)689-7554

Camp Church & Associates  
4th Floor, 555 West Georgia Street  
Vancouver, B.C.  
V6B 1Z5

ATTENTION: BRUCE LEMER

Dear Sir;

**RE: Ruttan v. Vancouver General Hospital and Health Sciences Centre  
and the Canadian Red Cross Society, Supreme Court Action No.  
06650 Victoria Registry**

We act for Randy Ruttan, the plaintiff in the above-noted action. This is an action against the Defendants for, *inter alia*, negligence in failing to screen blood and blood products for Hepatitis C resulting in my client contracting Hepatitis C from the blood and/or blood products. The case, of course, is more complex than described, but for the purpose of this letter should suffice.

It is increasingly difficult to pursue this claim as a result of the exorbitant disbursements that are necessary to be incurred. There are multiple medical experts to retain who are highly specialized in their field and who are expensive. We would expect that most of the experts would have to testify as well. Unfortunately, as a result of our client's illness, which is the subject matter of this action he is not able to work in order to fund his case.

The disbursements, time and volume of the documentation and complexity of this case makes it difficult to pursue these cases singly.

We are writing this letter in support of the application for a class action for persons who have contracted Hepatitis C from blood and blood product

This is Exhibit "J" referred to in the  
affidavit of Sparrow Matthews  
made before me on Jan 17 19 97

This is Exhibit "B" referred to in the  
affidavit of J. Camp  
made before me on NOV 23 19 99

A Commissioner for taking Affidavits  
for British Columbia

JAN-17-97 FRI 2:41 PM COX TAYLOR

FAX NO. 1 250 382+4236

P. 4


Page 2

transfusions.

Yours very truly,

COX, TAYLOR

Per:



Susan L. Beach

SLB/llv

5

MEMORANDUM

FROM: SDM  
TO: JJC, Bruce Lemer  
CLIENT: HEPATITIS C  
RE: CLASS ACTION

DATE: June 9, 1997

This is Exhibit E referred to in the  
affidavit of J. J. Camp  
made before me on May 23 1997  
A Commissioner for taking Affidavits  
For British Columbia

I have reviewed the decision of the Supreme Court of Illinois in *Advincula v. United Blood Services* 678 N.E. 2d 1009, decided December 19, 1996. The decision of the Appellate Court of Illinois is reported at 654 N.E.2d 644.

The issue in that case was the standard of care imposed on a blood bank by section 3 of the *Blood and Organ Transaction Liability Act* (Blood Shield Act).

The case was a wrongful death action brought by the family of a man who received a transfusion of blood infected with HIV. The plaintiffs alleged that the defendant, UBS failed to screen high risk donors and did not implement surrogate tests, including the anti-HBc test, which according to the plaintiffs was at that time proven effective in screening at-risk donors.

UBS receives donations from voluntary donors only and is a member of AABB. In the case, the Illinois Supreme Court said as follows about AABB:

UBS is a member of the AABB, an association of blood banks and blood banking professional engaged in the collection of whole blood from volunteer donors. AABB promulgates, establishes and publishes standards and policies for the collection, processing and distribution of blood, blood components and tissue by its members. AABB also inspects and accredits its members based on compliance with these standards and policies and issues advisory recommendations and guidelines. Federal and state governments generally accept AABB standards as authoritative.

Section 3 of the Blood Shield Act is entitled "Imposition of Liability" and reads as follows:

Every person, firm or corporation involved in the rendition of any of the services described in Section 2 warrants to the person, firm or corporation receiving the service and to the ultimate recipient that he has exercised due care and followed professional standards of care in providing the service according to the current state of the medical arts.

At trial, the jury was instructed as follows with respect to the standard of care:

the care that would be used by reasonably careful blood banks under the circumstances similar to those shown by the evidence at and prior to the time Ronald Advincula contracted the HIV virus. The law does not say how reasonably careful blood banks would act under the circumstances. That is for you to decide.

...

In determining whether the defendant exercised due care under the circumstances you may consider:

- a. whether defendant complied with its own internal policies and procedures;
- b. the knowledge and methods available at and prior to February 1984 to educate and screen donors and test blood;
- c. the practices and procedures of the blood banking industry for screening donors and testing blood;
- d. the government's recommendations and guidelines governing the collection and processing and distributing of blood and blood products.

The Supreme Court held that section 3 was ambiguous because the phrase "exercised due care" refers to a lay, or "reasonable" standard of care, and the phrase "followed professional standards of care" refers to a professional standard of care. The Court reviewed the legislative history and the purpose of the legislation to aid in its construction and found that the legislation was enacted in response to a 1970 case, *Cunningham v. MacNeal Memorial Hospital*, 47 Ill.2d 443, 266 N.E. 2d 897 in which the Court held that blood was a product for the purposes of strict tort liability.

In addition, the Court reviewed the common law and held that the basic difference between "due care" and a "professional standard of care" is that due care is the degree of care that a reasonable person is bound to exercise and professional are required not only to exercise reasonable care but also to possess and exercise a standard minimum of special knowledge and ability: Prosser & Keeton on Torts at 185 (6th ed., 1996); *Miller v. DeWitt* 59 Ill.App.2d 38, 208 N.E. 2d 249 (1965); *Taake v. WHGK*,

*Inc.*, 228 Ill.App.2d 692, 708, 592 N.E.2d 1159 (1992); *Eaves v. Hyster Co.* 244 Ill.App.3d 260, 264 and others.

The Court concluded that the correct interpretation of the Blood Shield Act is that the conduct of an alleged tortfeasor is to be evaluated against the standard of care applicable to professional conduct. The Court considered the evidence that UBS resembled a corporation more than an association of medical professionals and the blood screening was conducted by nonprofessionals, but held that the fact that the corporate decisions and implementation of policies was initially reviewed by the medical director who is a physician and his judgments involved balancing of competing medical policies and procedures and was an exercise of medical judgment.

The Court held that its decision comported with those of a majority of the jurisdictions which have considered the issue (see WL page 44 of 71 for a list of the cases).

However, the Court went on to find that the section was not consistent with the professional standard of care being the exclusive standard of care under s.3. It held that conformance with professional standards of care, proven by expert testimony or other evidence of professional standards, is indicative but not conclusive of due care. This evidence may be overcome by a sufficient showing of contrary expert opinion testimony (or its equivalent) that the prevailing professional custom or usage itself constitutes negligence.

The Court concluded that the trial court misinterpreted section 3 to allow for application of merely a reasonableness standard of care, rather than a professional standard of care. The case was remanded for retrial.

While this case is closely tied to the language of the statute which governed the standard of care, the decisions cited in the case and our Ontario case of *Pittman* point to blood banking cases being medical negligence cases as opposed to product liability cases. We should keep these decisions in mind when instructing experts because we will need to find evidence tending to show that the CRC's actions were outside what was considered professionally acceptable by blood bankers at the time. The Illinois Supreme Court's characterization of the AABB as a body which set standards accepted by the U.S. FAA and blood banking community is very helpful to us.



6

**CAMP CHURCH & ASSOCIATES**  
**BARRISTERS**

J.J. Camp, Q.C.\*  
David P. Church\*  
Joe Fiorante\*  
Andrew J. Pearson  
Sharon D. Matthews  
Ian G. Schildt

4th Floor, Randall Building  
555 West Georgia Street  
Vancouver, B.C.  
Canada V6B 1Z5

Telephone: (604) 689-7555

Facsimile: (604) 689-7554

FILE REF: 96015/001

November 18, 1997

By Fax No. (613) 952-1154

The Honourable Allan Rock  
Minister of Health  
Parliament Hill  
Ottawa, ON  
K1A 0A6

This is Exhibit G referred to in the  
affidavit of J.J. Camp  
made before me on NOV 23 19 99  
A Commissioner for Taking Affidavits  
For British Columbia

Dear Mr. Minister:

**Re: Endean v. Canadian Red Cross et al**

I am lead counsel on the class action in British Columbia for Hepatitis C victims who received infected blood between mid-1986 and mid-1990. I understand that you have consulted with some of the organizations and support groups for Hepatitis C victims along with other counsel who represent Hepatitis C victims. I have been working closely with Harvey Strosberg, Q.C., and others across Canada to formulate litigation and settlement strategies to attempt to resolve the plight of the Hepatitis C victims without the added burden which litigation will impose on all parties.

I thought it appropriate to write to establish a line of communication to facilitate an early and equitable resolution of the claims of the Hepatitis C victims

## CAMP CHURCH & ASSOCIATES

represented by me. I offer the following very brief synopsis. The class action was commenced on September 19, 1996. The Government of Canada is ably represented by John Haig, Q.C. who, so I understand, works in conjunction with Don Rennie at the Department of Justice in Ottawa. The Red Cross resisted certification at the week long hearing before Justice Ken Smith in March 1997. I thought it particularly appropriate that neither the Government of Canada nor the Government of British Columbia opposed certification except on the limited issue of spoliation (the alleged intentional destruction of tapes and verbatim transcripts of the minutes of the Canadian Blood Committee over a period of several years). Smith, J. certified the class on the negligence and spoliation issues on May 22, 1997. The Red Cross has appealed the certification generally and both Governments have appealed the certification of the common issue on spoliation. The appeal is set for March 18 - 20, 1998.

The reason the time frame of mid-1986 to mid-1990 was chosen is that this was the period of time in which the American Red Cross and the American blood banking community generally mandated surrogate testing in the United States to test for signs of Hepatitis C. In Canada, we were "studying the situation", and continued to study it until mid-1990 when tests for the Hepatitis C antibody were fully incorporated into the Canadian blood donation system. It is not my intention to argue the merits of my case in this letter but merely to explain the reasons for the time frame chosen for this class action.

## CAMP CHURCH & ASSOCIATES

Tragically, the British Columbia seropositivity rate for Hepatitis C (the proportion of the population which tests positive for the disease) is far greater than the national average. In fact, for many years, British Columbia reported nearly as many cases of Hepatitis C as the rest of the country combined. Some of this reflects an excellent reporting programme, but because the British Columbia blood donor pool had a high seropositivity rate, British Columbians have been especially hard hit by this disease. All indications suggest a class size of approximately 1,000 to 1,500 persons suffering Hepatitis C infection in British Columbia as a result of a blood transfusion during the relevant period.

I anticipate that discussions and negotiations will ensue after Mr. Justice Krever delivers his report. I leave this letter where I started it: my intention is nothing more than to establish lines of communication so that we can engage in a dialogue to resolve these cases without resorting to further litigation.

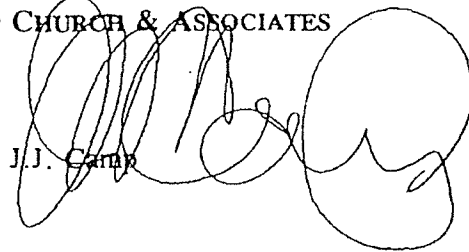
I look forward to hearing from you.

Yours truly,

CAMP CHURCH & ASSOCIATES

By:

J.J. Camp



CAMP CHURCH & ASSOCIATES

JJC:mf

cc: Lemer Kambas  
Attn: Bruce Lemer

Anita Endean (Representative Plaintiff)

Gignac Sutts  
Attn: Harvey T. Strosberg, Q.C.

7

## Ministers reject hepatitis C compensation

By DONOVAN VINCENT  
STAFF REPORTER

There will be no government compensation for people who contracted hepatitis C through tainted blood products, Canada's health ministers have agreed.

"We have good treatments, up-to-date treatments to deal with that disease. All of the treatments and drugs

are covered," Ontario Health Minister Jim Wilson said yesterday.

Alan Powell, who represents an organization for people infected by hepatitis C through blood, called the decision "devastating."

He said lawsuits launched on behalf of those victims will now proceed "full steam ahead."

Meanwhile, the deadline for a spe-

cial government compensation package for people who contracted HIV during Canada's tainted blood scandal will be extended to include about 100 more people, Wilson said.

The compensation package gave \$20,000 immediately to victims and \$30,000 a year for life.

The package will now cover people infected up to and including 1985.

## Municipal health official testifies in blood lawsuit

By REBECCA BRAGG  
STAFF REPORTER

A key health official began testifying yesterday at a trial alleging that the Red Cross neglected to safeguard the blood supply in the 1980s.

Bill Mindell was manager of community health information for Toronto's public health department from 1983-91.

In 1983 Mindell, now acting senior director of the City of York's public health unit, had requested there be co-ordination between the Red Cross, doctors who treated AIDS patients and public health officials.

Earlier that year, the Red Cross issued a news release advising those at high risk for AIDS not to give blood.

Among high-risk groups mentioned were "sexually active homosexual or bisexual men with multiple partners."

Lawyers for the family of the two deceased plaintiffs allege the Red Cross "was concerned more for the politics of fending off accusations of homophobia and racism than for protecting the blood supply."

They allege the Red Cross was negligent for failing to screen out two HIV-infected donors, also now dead, who testified on videotape they were not told gay men shouldn't give blood.



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Financial Commentator for  
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Fortune Financial Group Fortune Financial Corp  
Mississauga, ON



This is Exhibit "G" referred to in the affidavit of **SHARON MATTHEWS** made before me on **March 6, 1997**  
A Commissioner for taking Affidavits  
for English Ontario

This is Exhibit "H" referred to in the affidavit of **J. CAMP** made before me on **March 19, 1997**  
A Commissioner for taking Affidavits  
for English Ontario

# ATIONS

**GETTING THE BEST FOR LESS.**

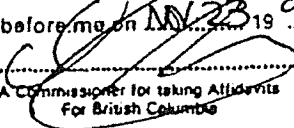
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8



**CAMP CHURCH & ASSOCIATES**  
BARRISTERS

J.J. Camp, Q.C.\*  
David P. Church\*  
Joe Fiorante\*  
Andrew J. Pearson  
Sharon D. Matthews  
Ian G. Schildt

This is Exhibit \* 1 \* referred to in the  
affidavit of J.J. Camp  
made before me on NOV 23 1997  
  
A Commissioner for taking Affidavits  
For British Columbia

4th Floor, Randall Building  
555 West Georgia Street  
Vancouver, B.C.  
Canada V6B 1Z5

Telephone: (604) 689-7555

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FILE REF: 96015/001

December 17, 1997

**"WITHOUT PREJUDICE"**

VIA FAX

Russell & DuMoulin  
Barristers & Solicitors  
2100 - 1075 West Georgia Street  
Vancouver, BC  
V6E 3G2

Ministry of Attorney General Legal Services  
Branch  
1301 865 Hornby Street  
Vancouver BC  
V6Z 2H4

Attention: James MacMaster

Attention: D. Clifton Prowse

Department of Justice  
900-840 Howe Street  
Vancouver, BC  
V6Z 2S9

Attention: John R. Haig, Q.C.

Dear Sirs/Mesdames:

Re: Endean et al. v. The Canadian Red Cross et al.  
S.C.B.C. Action No. C965349, Vancouver Registry

With a view to initiating settlement discussions, I write to outline the parameters of a proposal for the resolution of this class action. In my opinion, the certification of our class action in British Columbia offers a logical mechanism for settlement of British Columbia related Hepatitis C claims. In my opinion, the certification of the British Columbia class offers protection for both the plaintiffs and the defendants. Any settlements must be approved by the certification management judge. This requirement provides an objective assessment of the

## CAMP CHURCH & ASSOCIATES

reasonableness of the settlement and certainty for all parties. Furthermore, a court approved class settlement offers universality for all members of the class except those who opt out. It is my personal estimation that very few, if any, members of the class will choose to opt out assuming a fair and reasonable settlement is reached.

Moreover, the defendants cannot deal with any of the claimants covered by a certified class except through class counsel so a resolution through the class proceeding is the only practical alternative.

It may be that this initial proposal will serve as a model for the resolution of claims across Canada and I offer some additional suggestions to this end.

### Scope

At the outset, it should be made plain that any settlement agreement reached is conditional on court approval as required by the *Class Proceedings Act* (the "Act"). If a settlement agreement is not approved then all parties would retain their usual rights to proceed with litigation.

In the event a settlement proposal is agreed upon and approved by the British Columbia certification management judge, undoubtedly similar certification and approval can be obtained in Ontario and in Quebec, the other two jurisdictions with class proceedings legislation. Court approval of the settlement proposal in those jurisdictions should be reasonably straightforward if a British Columbia judge has independently and objectively reviewed and

## CAMP CHURCH & ASSOCIATES

approved the same or a similar settlement proposal. Canadian residents not covered by one of the three class proceedings could be brought into the British Columbia proceeding by certification of a non-resident sub-class pursuant to the provisions of the *Act* or, similarly, in Ontario under the Ontario jurisprudence. This overall settlement approach, in my opinion, comports with the rationale underlying the class proceedings legislation in each province.

Three jurisdictions in Canada are undertaking notification programs to ensure that certain transfused persons be tested for Hepatitis C. To my knowledge, each notification program covers those persons transfused between 1985 and 1990. In those jurisdictions where there has been no notification program, this matter will have to be addressed. The notification program can and should be coordinated with the notice provisions in the class proceedings legislation.

### Compensation Features

#### Initial Payment

I propose that each Hepatitis C victim receive *initial compensation* for the fact that they were infected and have suffered by dint of the infection regardless of whether they are symptomatic or asymptomatic.

#### Deferral Feature

Hepatitis C victims must be classified into two groups. The first group would be those victims who are in a position to have their damage claim reasonably assessed. For example, this group would include those Hepatitis C victims who, for whatever reason, wish to

## CAMP CHURCH & ASSOCIATES

have their claims crystallized, those Hepatitis C victims whose prognosis can be fairly well defined, and those Hepatitis C victims who are elderly or infirm. The remaining Hepatitis C victims would form a group whose damage claims would be deferred. This group would most likely be composed of persons who are either asymptomatic or mildly symptomatic and for whom no reasonable prognosis can be made, or those Hepatitis C victims who, for whatever reason, wish to have their compensation deferred. Needless to say, the primary reason for the deferral concept is the nature and effect of Hepatitis C which, as you know, can have a very long latency period before serious symptoms erupt. I propose that a fund be established and invested to meet the deferred claims. It will be necessary to consult with epidemiologists and actuaries to establish the appropriate amount and timing of the deferred claims fund. As this stage, I offer the following points:

- (a) the amount of funds set aside to meet these deferred claims must be adequate;
- (b) a process of adjudicating the claims in the future must be established; and
- (c) there has to be transparent reporting mechanisms by the trustees of the deferred funds so as to ensure that the deferred Hepatitis C victims have comfort and confidence that their future claims will be honoured and paid.

### Exigent Claims

A procedure should be established to swiftly identify and process exigent claims where the infected person is very ill or requires immediate financial assistance for coverage of medical treatment and wage replacement.

## CAMP CHURCH & ASSOCIATES

### Heads of Damage

The compensation will have to address the usual issues of pain and suffering, loss of enjoyment of life, past and future wage loss, loss of earning capacity, medical costs, and in serious cases, management fees and income tax gross up where substantial future care costs are in issue. I do wish to emphasize the stress and anxiety experienced by Hepatitis C victims who have been innocently afflicted with a largely untreatable disease which may erupt and ravage the victim decades into the future. In my experience, many Hepatitis C victims are very anxious about the transmission of the disease which often inhibits them both mentally and physically. Included under this component is shunning by friends, family and acquaintances. For some, the family has become dysfunctional, or healthy family members find themselves taking on ever-increasing responsibilities and duties with no end in sight. I appreciate that these notions fall within the rubric of "loss of enjoyment of life" but I consider them very important to the quantification of damages for Hepatitis C victims.

Compensation will also have to be provided to family members and caregivers who provide exceptional care to Hepatitis C victims in accordance with the "in trust" damage awards jurisprudence. The burden imposed on these people can be very great. For example, family members or caregivers may have to quit work or forego university to care for Hepatitis C victims.

I should point out at this juncture that it is our experience in British Columbia that the vast majority of our Hepatitis C victims do not present with incapacitating health problems. Rather, their biggest concern is what the future holds for them. They face the possibility, if not

## CAMP CHURCH & ASSOCIATES

the probability, of future serious and potentially incapacitating symptoms and effects associated with their disease. Hence, careful consideration must be given as to how to assess the future developments of the disease.

Another relatively minor issue which must be addressed is funeral expenses for those who have passed away or will pass away due to the effects of Hepatitis C.

### Assessment of Compensation and Causation

In British Columbia, I propose we use the procedures provided in the *Act* to assist with *this task in a manner which allows for each claim to be resolved individually but in a more efficient manner than by trying each claim.* The entire process should be Court supervised, and accordingly will provide the necessary assurance to the claimants, the Court, the governments and the public (who will fund the settlement), that the claims are being fairly resolved.

In broad terms, I propose that the parties arrange for an array of claims in terms of symptomology, age of claimant, etc., to be assessed under the traditional heads of damage by the certification management judge in a mini-trial or similar proceeding. From the assessment of those representative claims, the certification judge will establish a matrix for compensation. In my opinion it will not take long to lay down a framework of compensation for the types of symptoms and effects caused by Hepatitis C. I see this assessment process measured in months and not in years. Once this framework is established, it will be reasonably straightforward to agree upon assessments for the remaining Hepatitis C victims.

## CAMP CHURCH & ASSOCIATES

The details of this mechanism can be discussed at greater length, but at this time I provide the following proposed particulars for discussion purposes:

- the certification management judge will hear several representative cases on issues of causation and quantum assessment and make judgments;
- those judgments will be used to establish guidelines for causation and quantum determinations in all claims;
- the certification management judge will appoint a referee or a panel (with medical and legal expertise) to determine causation and quantification issues for the remaining claims;
- the referee would first make a determination with respect to causation. This could be based on documentary evidence such as affidavits pertaining to the issue of causation, medical records, physicians' reports, and the like. Some cases may be more suitable for resolution by a summary hearing. A right of appeal to the certification management judge would be provided;
- once a claimant has established the right to compensation, then that claimant will have a fixed amount of time to elect present or deferred compensation; and
- at the time compensation is to be assessed for each claimant, it would again be through standardized forms of medical reports, affidavits, etc., with a provision for summary hearings in appropriate cases and the right of appeal.

It will be important to ensure that this assessment procedure is both cost-efficient and expeditious.

## CAMP CHURCH & ASSOCIATES

Once again, this assessment procedure could be exported to the settlement of the Ontario and Quebec classes and vice versa so as to ensure reasonable uniformity across Canada.

The reason for suggesting a more individualized approach to the assessment of damages is the nature of Hepatitis C infection. There are a myriad of symptoms and long term effects which will vary from individual to individual and each Hepatitis C victim must have a reasonable degree of comfort and confidence that they will be fairly assessed on the facts and circumstances of their particular case. I reiterate that this process would appear to be much more formidable and complex in theory than it will turn out to be in reality. Certainly, this has been true of settling asbestos claims with a not dissimilar array of a large number of symptoms and vast differences in personal circumstances.

In addition, the involvement of the Court and the use of the class procedures has benefits to all parties. First, for the defendants, the use of traditional heads of damage and the Court's assessment of representative cases assists in justifying and minimizing the cost of the settlement, which, we suspect, will largely be comprised of public money. Secondly, it legitimizes the settlement (i.e. court approval of the settlement) and removes the sting of the criticism of a "meat market" approach. Third, individual assessment of damages will, in our view, lessen the likelihood of objection to the settlement proposal from the various stakeholders. The same is true, incidentally, of the proposal for deferring claims.



## CAMP CHURCH & ASSOCIATES

### Proof of Causation

This issue needs to be made simple because much of the information pertaining to proof of transfusion of infected blood is in the hands of the Canadian Red Cross, hospitals and physicians. In some cases, these records will already be destroyed. In other cases, the records are imperfect or difficult to access. For these reasons, I suggest that each Hepatitis C claimant be required to prove only that they received a transfusion (through hospital records, their own evidence, the evidence of their physicians and surgeons, etc.), and that they have not engaged in any high risk activity such as intravenous drug use. Once that has been established, the burden will shift to the defendants to disprove causation (through a complete traceback with full disclosure of donors, etc.)

### Concluding Comments

I trust that this proposal will generate productive and focussed discussion for a fair, equitable and speedy resolution.

Yours truly,

CAMP CHURCH & ASSOCIATES

By:

J.J. Camp

JJC:hp

9

# CAMP CHURCH & ASSOCIATES

## BARRISTERS

J.J. Camp, Q.C.\*  
David P. Church\*  
Joe Fiorante\*  
Andrew J. Pearson  
Sharon D. Matthews  
Ian G. Schildt

This is Exhibit "J" referred to in the  
affidavit of J.J. Camp  
made before me on May 23 1999  
A Commissioner for taking Affidavits  
For British Columbia

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FILE REF: 96015/001

January 26, 1998

### BY FAX

Gignac, Sutts  
600 Westcourt Place, 251 Goyeau Street  
P.O. Box 670  
Windsor, Ontario  
N9A 6V4  
Attention: Harvey T. Strosberg, Q.C.

Buchan Derrick & Ring  
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Halifax, Nova Scotia  
B3J 1J2  
Attention: Dawna Ring

Elliott Rodrigues  
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Toronto, Ontario  
M5H 3S5  
Attention: Douglas Elliott

Kapoor, Selnes, Klimm & Brown  
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Melfort, Saskatchewan  
S0E 1A0  
Attention: Bill Selnes

Docken & Company  
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Attention: Clint G. Docken

Tinkler Morris  
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M5H 3S5  
Attention: Philip S. Tinkler

Kenneth Arenson  
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Toronto, Ontario  
M5T 1X4  
Attention: Kenneth Arenson

Teplitsky, Colson  
#200 - 70 Bond Street  
Toronto, Ontario  
M5B 1X3  
Attention: Harvin Pitch

## CAMP CHURCH & ASSOCIATES

Pierre Lavigne  
Avocat  
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Suite #200  
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Attention: Pierre Lavigne, Q.C.

Michel Savonitto  
Avocat  
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Montreal, Quebec  
H3B 4L8  
Attention: Michel Savonitto

Klein, Lyons  
500 - 805 West Broadway  
Vancouver, B.C.  
V5Z 1K1  
Attention: David Klein

Genest Murray DesBrisay Lamek  
#700 - 130 Adelaide West  
Toronto, Ontario  
M5H 4C1  
Attention: Paul Lamek, Q.C.

Dear Sirs/Mesdames:

Re: **Endean et al. v. The Canadian Red Cross et al.**  
**S.C.B.C. Action No. C965349, Vancouver Registry**

I have discussed settlement possibilities with several of you. This letter is predicated in part on information learned during the course of these conversations plus information gleaned otherwise.

As you know, rumours abound.

Reliably, I can advise that there is a working group of representatives of various Provincial Ministries of Health and a representative of the Federal Ministry of Health which has been pulled together and has been working since early January on, among other things, settlement of the claims of Hepatitis C victims who are HCV positive as a result of the provision of blood services. I also know that my letter of December 17, 1997 "had the widest possible circulation" although I have not received a response to that letter. Furthermore, one Ministry source indicated that the letter was "very useful". I was also reliably informed that part of the reason for adjourning the meeting of the Provincial Ministers of Health set for Vancouver at the end of January, 1998 was to allow for more time for a deliberation of the settlement of the HCV claims. The Red Cross is not playing a significant role in these settlement deliberations other than to encourage them and to facilitate them. So far as I am aware, for example, the Red Cross has not been invited to participate in the working group noted above and, so I am informed, the Red Cross is not offering any financial contribution.

Bill Selnes appears to enjoy a good working relationship with his Minister of Health and I enclose a memorandum from Bill dated January 22, 1998 pertaining to his latest communication. You will see on page 2 of his memorandum a reference to the possibility of legislation being introduced to prevent HCV law suits. I have heard this from other sources and I am satisfied that this option is being seriously considered by the working group. The removal

## CAMP CHURCH & ASSOCIATES

of the right to sue is probably a breach of the Charter, especially in this jurisdiction where the class action has already been successfully certified, but, as you know, the Provinces could use the override provisions in Section 33 of the Charter if they had the will to do so.

I am also aware that there are divisions between the Provinces on the kind of settlement proposal that ought to be made as well as the monetary terms of any settlement proposal. Furthermore, it will come as no surprise to you that there is a division between the Federal Government and the Provinces pertaining to funding, particularly for future medical costs which the Federal Government asserts the Provinces should pay for.

Beyond this, I know very little except, as I said, rumours.

I am reasonably confident that unless we, as lawyers, take steps, the governments will attempt an "end run" around us and make proposals directly to our clients. Again, I may be in a somewhat different situation since my action has already been certified and there is a serious question as to whether the defendants or their representatives can deal directly with my clients. In British Columbia, the Deputy Attorney General made a submission to the Ethics Committee of our Law Society some months ago, indicating that where a class has been certified, counsel for the defendants cannot approach and deal directly with members of the class. The Ethics Committee arrived at the same conclusion.

I know it is trite, but it behooves us to be proactive and not reactive. Those of you who were involved with the HIV settlement process are highly critical of the way in which the governments approached and handled settlement in that matter. I have a few modest suggestions we could undertake on a concerted basis:

1. meet with the organizations such as HECSC to alert them to the prospects of direct dealing with HCV claimants and why that process should be avoided;
2. embark on a public relations campaign to force the Governments to negotiate in good faith with the lawyers who are acting for the HCV victims. This campaign will have to be well financed and well orchestrated;
3. meet with the Ministry of Health within each Province to badger those Ministries so as to ensure that the lawyers for the HCV victims are at the negotiating table;
4. publish a settlement proposal ourselves. This may prove to be more difficult than merely publishing the thrust of the proposal contained in my letter of December 17, 1997, as it will have the appearance of neglecting HCV claimants outside the material time for our class.

## CAMP CHURCH & ASSOCIATES

In my view, we should have a conference call within the next couple of days for all of those who can join the call, to discuss a plan of action. I share the viewpoint of Bill Selnes that time is of the essence. Attached is a schedule of proposed times for a conference call. Please respond by 5:00 p.m. P.S.T., Tuesday, January 27, 1998.

Yours truly,

CAMP CHURCH & ASSOCIATES

By:

J.J. Camp

JJC:hp

**CAMP CHURCH & ASSOCIATES**

**PROPOSED TIMES FOR CONFERENCE CALL**

**Please indicate below convenient times for a telephone conference call and return by fax by 5:00 p.m. PST on Tuesday, January 27, 1998.**

Thursday, January 29, 1998	08:00 a.m. PST	
Thursday, January 29, 1998	10:00 a.m. PST	
Thursday, January 29, 1998	12:00 noon PST	
Thursday, January 29, 1998	02:00 p.m. PST	
Thursday, January 29, 1998	04:00 p.m. PST	

10



MINUTES OF HEPATITIS C CLASS COUNSEL CONFERENCE CALL - JANUARY 29, 1998

**Participants:**

J.J. Camp  
Sharon Matthews  
Pierre Lavigne  
Harvin Pitch  
David Klein  
Bill Selnes  
Tom Buglas (for Clint Docken)  
Ken Arenson  
Bruce Lemer  
Dawna Ring

This is Exhibit K referred to in the  
affidavit of JJ Camp  
made before me on Nov 22 1997

A Commissioner for taking Affidavits  
For British Columbia

**Update on Actions Around the Country**

Ontario

Harvey Strosberg's office is drafting the statement of claim. Notices have been gone out but no pleadings have been issued.

As far as Harvin Pitch and Ken Arenson are aware, no one is doing a pre-August 1986 class action. David Klein understood that David Harvey was prepared to act for this class.

JJ Camp advised that he had heard through the CRC that a two Ontario lawyers, Dermott and Osbaldason (sp.?) of Dempster & Co., have advised the CRC that they represent 25 Hepatitis C victims and will be representing more. They are demanding meetings with the government on compensation.

Ken Arenson commented that those lawyers may be representing 25 Hamilton area hemophiliacs.

Quebec

Pierre Lavigne reported that there certification motion is set for February 23 for five days and they may use part of the following week. All examinations have been completed and all undertakings have been fulfilled. He does not anticipate the hearing will be adjourned.

B.C.

JJ Camp reported that the B.C. class is moving ahead and the plaintiffs are pressing vigorously. We have asked for documents and are receiving trial estimates. The certification appeal is set to proceed March 18-20, 1998.

David Klein reported that for the pre-August 1986 class, he has requested statements of defence and has indicated to the defendants that he will seek a certification hearing as soon as the Endean appeal has been decided.

Alberta

Buglas reported that they filed and served their statement of claim last week.

The action is on behalf of approximately 50 individual plaintiffs, consolidated in one claim.

## **Government Response to Krever**

### Quebec

Pierre Lavigne indicated that he has a copy of the unanimous resolution that was passed in the Quebec legislature.

### Nova Scotia

Dawna Ring reported that George Moody (opposition) had come out in support of compensation after the Krever Report was issued but the provincial Minister of Health was wishy washy on compensation and refers to Diane Parson as an unfortunate outcome of the health care system.

### Saskatchewan

Bill Selnes has copies of the unanimous motion of support passed by the Legislative Assembly.

### Newfoundland

Premier Tobin has voiced support for the concept of compensation.

### Overall

JJ Camp reported that a governmental working group has been struck to address compensation. It consists of representatives of some but not all provincial ministries of health and a representative of the federal ministry of health. The CRC is not in this loop and Bob Rae is trying to insert himself on behalf of the CRC.

After the ministers' meeting was postponed, the group planned to have ideas distilled for the deputy ministers to consider by the end of January. We were informed on January 30, 1998 that the deputy ministers did meet in Vancouver on Thursday January 29, 1998 (see postscript).

The latest news is that the Ministers are meeting in mid-February in Ottawa.

It appears clear that the governments are at least contemplating announcing a take or leave it package and they are considering legislating away the right to sue.

These issues raise the following concerns:

- can or will the governments legislate away the right to sue retrospectively as well as prospectively?
- can the governments ethically deal with members of a certified class directly on compensation?

- regardless of whether the governments can ethically deal with members of a certified class directly, they will, and should that problem be addressed?
- class members and prospective class members must be informed that the governments will attempt to deal with them directly
- how do the lawyers insert themselves into the process?
- to what extent do we cooperate with consumer groups?

HeCSC has had meetings with Rock on compensation and had a press conference this week in which they publicly chastised the Ontario Minister of Health for refusing to meet with them. Dawna Ring reported that CHS has been meeting with government officials on compensation and is the only consumer group involved in the transition to the new blood system.

#### **Suggested Strategies to Deal with Compensation**

- our proposal for compensation should be released
- our settlement position must be for full compensation
- any proposal released now should not include dollar amounts
- any benefits of a public relations battle versus the negative backlash against lawyers must be considered
- class members must be educated about the strategies of the government and the importance of having a negotiated settlement
- the Ontario group may approach retired Justice Holland and/or Bob Rae
- political force is necessary to get a seat at the negotiation table and the best political force we can muster is generated by our clients
- it is important to keep judicial involvement in the compensation process
- immediate compensation for exigent cases should be considered but a concern was registered that interim payments may be detrimental to the timely resolution of compensation as a whole
- our clients should write to the Ministers of Health, MLAs and MPs to say that we should be at the table
- we need to move swiftly

#### **Summary**

Bill Selnes indicated that he will arrange for a press conference to release the settlement proposal next week. JJ Camp indicated that we would likely do something similar later next week.

## Postscript

JJ Camp had conversations with counsel for the BC defendants on January 30, 1998, the most salient points of which are as follows:

### B.C. Government

- as of 5pm January 29, 1998, the federal government is running the compensation program
- BC has little or no input or role in the compensation process
- the federal government will do exactly as it sees fit when it sees fit

### Federal Government

- talks among the Deputy Ministers are proceeding now in Vancouver
- the talks are proceeding at a very general level and they need a consensus
- the work has been delayed by two things - the icestorm and the fact that the participants are beginning to realize how complex the issue is
- the CRC is not at the compensation talks table
- the Federal Minister is pushing hard
- mid-February will be "crunch" time - that is when the Ministers will meet
- they are several steps away from being in a position to sit down the lawyers and negotiate
- several options for compensation are being considered - JJ Camp's letter is very much a part of the options being considered
- the lawyers' frustration at being excluded will be passed on to Ottawa

### CRC

- CRC is not in the loop and Rae may not yet be up to speed on the issue
- the CRC has been without general counsel since September. Sam Schwiesberg has just been appointed Corporate Secretary and General Counsel on a one year contract commencing February 1, 1998

11

**CAMP CHURCH & ASSOCIATES**  
BARRISTERS

J.J. Camp, Q.C.\*  
David P. Church\*  
Joe Fiorante\*  
Andrew J. Pearson  
Sharon D. Matthews  
Ian G. Schildt

This is Exhibit L referred to in the  
affidavit of J.J. Camp  
made before me on NOV 23 1999  
[Signature]  
A Commissioner for taking Affidavits  
For British Columbia

4th Floor, Randall Building  
555 West Georgia Street  
Vancouver, B.C.  
Canada V6B 1Z5

Telephone: (604) 689-7555

Facsimile: (604) 689-7554

FILE REF: 96015/001

January 30, 1998

VIA FAX NO. 775-5942

VIA FAX NO. 660-2636

Department of Justice  
Suite 900  
840 Howe Street  
Vancouver, BC  
V6Z 2S9

Ministry of Attorney General  
Legal Services Branch  
1301 865 Hornby Street  
Vancouver, BC  
V6Z 2H4

Attention: John R. Halg, Q.C.

Attention: D. Clifton Prowse

Dear Sirs/Mesdames:

Re: Endean et al. v. The Canadian Red Cross et al.  
S.C.B.C. Action No. C965349, Vancouver Registry

I refer to our recent telephone conversations. The Krever Report was handed down in the fall of 1997 and it has stirred settlement discussions. However, I write to express a growing frustration at the apparent unwillingness of the government defendants to meet with counsel for the Hepatitis C victims to resolve this matter. As I explained, I have been conferring with a network of lawyers across Canada and I believe I can safely say that there is uniformity on this issue.

On December 17, 1997, I wrote a letter to get the settlement ball rolling. I am told that this letter has had considerable circulation but it has not resulted in any face-to-face discussions. I am also informed that the Health Ministers will be meeting on approximately February 15, 1997 to form a unified settlement position if at all possible. Needless to say, because none of the lawyers representing Hepatitis C victims are in the "settlement loop", rumours abound. As well, the settlement process is not transparent. Furthermore, with respect to the certified class action in British Columbia, any settlement of the claims pertaining to that class must be approved by the court. Lawyers for the Hepatitis C victims must become engaged in the settlement process. Our clients demand no less.

I remind you that our class has been certified and it would be improper for the defendants to deal directly with the class members.

If there is no change in the apparent policy to exclude the lawyers for the Hepatitis C victims, the Hepatitis C claimants will undoubtedly seek a public forum to vent their frustration.

I assure you that the network of lawyers that I have been conferring with are reasonable and sensitive to government concerns.

Please bring this letter to the attention of your client. We are anxious to have this matter addressed immediately.

Yours truly,

CAMP CHURCH & ASSOCIATES

By:

J.J. Camp

JJC:hp

cc: Russell & DuMoulin  
Attention: James MacMaster

Ankenman & Company  
Attention: John Ankenman

Harper Grey Easton  
Attention: Peter Willcock

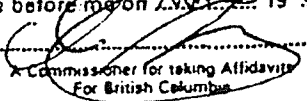
Grant Kovacs Norell  
Attention: Bruce Lemer

12



**CAMP CHURCH & ASSOCIATES**  
BARRISTERS

J.J. Camp, Q.C.\*  
David P. Church\*  
Joe Fiorante\*  
Andrew J. Pearson  
Sharon D. Matthews  
Ian G. Schildt

This is Exhibit "M" referred to in the  
affidavit of JJCamp  
made before me on Nov 23 19 99  
  
A Commissioner for taking Affidavits  
For British Columbia

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FILE REF: 96015/001

February 3, 1998

VIA FAX NO. 775-5942

VIA FAX NO. 660-2636

Department of Justice  
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840 Howe Street  
Vancouver, BC V6Z 2S9  
Attention: John R. Haig, Q.C.

Ministry of Attorney General  
Legal Services Branch  
1301 865 Hornby Street  
Vancouver, BC V6Z 2H4  
Attention: D. Clifton Prowse

Dear Sirs/Mesdames:

Re: Endean et al. v. The Canadian Red Cross et al.  
S.C.B.C. Action No. C965349, Vancouver Registry

Further to my letter of January 30, 1998, and Mr. Prowse's telephone conversation with Sharon Matthews today, I advise that I was aware that Mr. Selnes intended to take action in Saskatchewan to vent the frustration of the Hepatitis C claimants in that province. Attached is a copy of a press conference statement issued by him on behalf of his clients.

Similar steps will be taken across Canada, so far as I am aware, until the governments engage the lawyers for the Hepatitis C claimants in meaningful, face-to-face, good faith compensation negotiations.

We intend to hold a press conference in Vancouver on Friday, February 6, 1998 along the same lines as Mr. Selnes. I thought it prudent to give you advance notice of our intention to hold this press conference which will not be necessary if the governments engage us in settlement negotiations.

Yours truly,

CAMP CHURCH & ASSOCIATES

By:

  
J.J. Camp

100011

\* Denotes Law Corporation

## CAMP CHURCH & ASSOCIATES

cc: Russell & DuMoulin  
Attention: James MacMaster

Ankenman & Company  
Attention: John Ankenman

Harper Grey Easton  
Attention: Peter Willcock

Grant Kovacs Norell  
Attention: Bruce Lemer

13

This is Exhibit "N" referred to in the  
affidavit of J.J. Camp  
made before me on MAY 23 1997

NOTICE OF PRESS CONFERENCE

A Commissioner for taking Affidavits  
For British Columbia

ANITA ENDEAN, BILL BARICHELLO AND SHARON AND DAVID LALONDE, with their lawyers J.J. CAMP, Q.C., BRUCE LEMER and SHARON MATTHEWS, plaintiffs counsel for the members of the certified class action proceeding *Endean v. Canadian Red Cross et al.*, who are individuals infected with Hepatitis C through blood transfusions administered between August 1986 and July 1990, and DAVID KLEIN, plaintiffs counsel for persons infected with Hepatitis C through blood transfusions administered before August 1986 will hold a PRESS CONFERENCE on:

FRIDAY, FEBRUARY 6, 1998 at 11:00 am  
at  
THE FOUR SEASONS HOTEL, ASPEN ROOM  
791 WEST GEORGIA STREET, VANCOUVER

The press conference has been called for these reasons:

1. Shortly after the certification of the British Columbia class action, Federal Health Minister Allan Rock advocated compensation for those infected with Hepatitis C through blood transfusions. Recently, Mr. Justice Krever in his Royal Commission Report recommended a compensation scheme for those individuals as well. Since then, there have been meetings between representatives of the Federal and Provincial Governments to determine what, if any, compensation will be offered. Hepatitis C victims and their lawyers have been denied an opportunity to negotiate;
2. It is important for the public to understand how this disease affects its victims and their need for prompt and fair compensation. For that reason, Ms. Endean and others who were infected through blood transfusions will be present to tell their stories;
3. Mr. Camp has prepared a proposal for resolving these claims on behalf of members of the class and will outline the proposal at the press conference; and
4. It is extremely important that the Federal and Provincial governments undertake good faith, face-to-face settlement negotiations with counsel for the Hepatitis C victims to ensure that a fair, just and workable compensation scheme is developed.

For further information feel free to contact J.J. Camp or Sharon Matthews at 689-7555, Bruce Lemer at 609-6699 or David Klein at 874-7171.

14

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**BARRISTERS**

J.J. Camp, Q.C.\*  
David P. Church\*  
Joe Fiorante\*  
Andrew J. Pearson  
Sharon D. Matthews  
Ian G. Schildt

This is Exhibit "O" referred to in the  
affidavit of J.J. Camp  
made before me on May 23, 1999  
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For British Columbia

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FILE REF: 96015/001

February 9, 1998

**BY FAX**

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Attention: Dawna Ring

Elliott Rodrigues  
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Attention: Douglas Elliott

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Attention: Bill Selnes

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Attention: Paul Lamek, Q.C.

Dear Sirs/Mesdames:

Re: **Endean et al. v. The Canadian Red Cross et al.**  
S.C.B.C. Action No. C965349, Vancouver Registry

We held a press conference in British Columbia on Friday, February 6, 1998 comprised of four Hepatitis C claimants from our class and four from a proposed class of claimants before mid-1986. The conference was quite well reported. I attach a copy of the article from the Vancouver Sun. Incidentally, I have no idea where the figures of \$5,000 - \$20,000 come from. Certainly, they did not come from me and I urge all of us to refrain from promoting any numbers until we have conferred and discussed the matter fully.

On Friday afternoon, Bruce Lemer, Sharon Matthews and myself met with Cliff Prowse, counsel for the Province of British Columbia, John Haig, counsel for The Attorney General of Canada and Lillian Bains, a policy advisor to the Minister of Health. Lillian Bains advised that she had become involved in the "blood matters" very recently.

## CAMP CHURCH & ASSOCIATES

I opened the meeting by advising that not only should counsel for Hepatitis C victims be in the "settlement loop" generally but in this jurisdiction it was imperative that happen because the *Class Proceedings Act* required court approval of any settlement and that it was most unlikely that the court would approve a settlement that the claimants were not prepared to endorse. I also indicated that it was not helpful to have rumours flying around because we were frozen out of all settlement discussions.

I advised that the lawyers for Hepatitis C claimants across Canada conferred fairly regularly and that the governments of Canada should assume that we were reasonably cohesive. Lillian Bains indicated that it was not likely there would be any settlement that was not universally applicable across Canada.

I asked pointedly about the option to eliminate the right of Hepatitis C claimants to sue. I indicated that this was causing our clients a great deal of distress and would be most vigorously resisted. Cliff Prowse interjected to say that we should not be surprised that option was being considered because it was favoured by Krever. I indicated that I viewed Krever's recommendation as one that removed fault and not a recommendation removing the right to sue.

I also indicated that we realize the governments would want to get their respective houses in order but that our patience was wearing thin. We would not be prepared to recommend a take it or leave it offer unless it was very generous. I also recorded our



## CAMP CHURCH & ASSOCIATES

frustration at the governments not recognizing the role which ought to be played by the lawyers for the Hepatitis C victims. I reiterated that these lawyers were comprised primarily of senior counsel, with considerable experience in the area and, in my opinion, were both reasonable and sensitive.

I also indicated my personal view that I felt that the estimated number of 60,000 Hepatitis C sufferers was probably on the high side. If you took the numbers emanating from British Columbia and Saskatchewan, both of which provinces have notification programs, then extrapolating from those jurisdictions the number was likely well under 30,000. Secondly, the press had been widely quoting the figure of 3.5 billion dollars as a demand. I said that it was not helpful in my opinion to be focusing on that number until we have more reliable information on the number of Hepatitis C claimants and the nature of their claims. Further, I recorded my personal opinion that I felt that most of the claimants in our class in British Columbia were suffering from mostly mild to moderate symptoms and I suspected the majority of those persons would want to defer any final compensation.

In a nut shell I said that if the lawyers were not consulted, the result was probably going to be an unacceptable proposal which may well put the process further back from where we are now.

## CAMP CHURCH & ASSOCIATES

Lillian Bains indicated that the provinces were already paying a very substantial sum toward the health care of Hepatitis C sufferers and the Federal Government did not seem to be putting enough weight on this factor. She indicated that in her opinion the majority of the liability did not rest with governments but rather with the Canadian Red Cross. She estimated that the British Columbia Government spends approximately \$50,000 per year on Hepatitis C claimants. She said, finally, that the Minister of Health in British Columbia is extremely concerned and compassionate towards the Hepatitis C sufferers.

I indicated that I felt that the liability case against the governments was reasonably strong and that ought not to affect the settlement approach by the governments.

I got a strong sense from Lillian Bains that she was unhappy with the attempt by the Federal Government to push the provinces towards a consensus by leaking information to the press.

Lillian Bains emphasized that the governments could not enter into a settlement process which was "open-ended" because they could not commit for subsequent governments. Any package has to be in dollars which can be committed at the time the settlement is entered into. She noted again that the Federal Government is in a surplus position while the opposite is true for British Columbia. Towards the end of the meeting, Lillian Bains indicated that my letter of December 17, 1997, was very interesting and useful - it gave the governments

## CAMP CHURCH & ASSOCIATES

something concrete to look at. She indicated that they are not that stage yet and, I best I could tell, they were not likely to get there any time soon. She indicated that part of the problem was the fact that not very many provinces had notification programs and their numbers, therefore, were very soft.

We then spent some time discussing a matrix approach to compensation, a test case approach to compensation or a combination of the two. On behalf of counsel for Hepatitis C claimants, I indicated that the lawyers could move very swiftly on identifying the range of compensation for the differing ranges of symptoms.

John Haig indicated that he did not think any joint government proposal would be made for several more months but he was not in a position to say this with authority.

I left the meeting by indicating that the lawyers across Canada were ready, willing, able and anxious to engage in negotiations.

### Future Strategy

I think that the public pressure mounted in Saskatchewan, Alberta and British Columbia is working. I urge other jurisdictions to continue on with public pressure tactics.

CAMP CHURCH & ASSOCIATES

Eliminating the right to sue is being seriously considered and we must keep hammering against this option.

We should also take steps to crystallize the number of claimants and we should start to discuss the quantum of the compensation appropriate for the different ranges of symptoms.

I will keep you abreast of developments.

Yours truly,

CAMP CHURCH & ASSOCIATES

By:

J.J. Camp

JJC:mf  
Enc.

SURREY TEMPLE MURDER B3 • TRENDS BII

SECTION

B

# WER MAINLAND

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THE VANCOUVER SUN

SATURDAY, FEBRUARY 7, 1998

## Red Cross wants to compensate hepatitis C victims, lawyer says

## J.J. Camp says he learned about the Red Cross position from Bob Rae.

NEAL HALL  
VANCOUVER SUN

A Vancouver lawyer representing people infected with hepatitis C through transfusions of tainted blood says he made some progress Friday in a meeting with government representatives to discuss compensation for the victims.

And J.J. Camp said he's also learned the Canadian Red Cross believes those infected should be compensated and is willing to make a contribution.

Camp said he learned of the the Red Cross position from former Ontario premier Bob Rae, who speaks for the organization.

"He supports our urging that the representatives of hepatitis C victims be included at the negotiating table," Camp told reporters at a news conference held to illustrate the plight of those involved in a class-action suit against the Red Cross and the federal and provincial governments.

Later Friday, Camp met with lawyers for both governments to discuss the victims' frustration. He said he couldn't give details of the discussion, but he added: "It appears we are starting to build bridges."

During Friday's press conference, more than half a dozen of the victims of tainted blood spoke about how the disease has ruined their lives.

"We're sick and tired of being sick and tired," explained Victoria McClelland, who got the disease from a blood transfusion after she had a miscarriage in 1983.

"I've had this for 15 years and I don't know how much longer I'm going to live," she said, adding that she suffers fatigue, nausea and has been hospitalized for liver damage — hepatitis C can lead to liver cancer.

Anita Endean, 34, in whose name the class-action suit is being fought, broke down in tears when she spoke about how the non-curable and sometimes fatal disease has affected her future.

"I cry because this disease affects my daughter," said the Prince George nurse, who contracted the disease through a blood transfusion after a postpartum hemorrhage.

SEE DISEASE, B3

## Hepatitis C victims plead for government compensation

"She's very scared," Andean said of her daughter, who has no one to look after her if her mother dies.

Ted Killough of Parksville said he got the disease when he underwent open heart surgery in 1986 for a triple bypass. He said he worries a lot about infecting his wife.

"I was really appreciative to receive what I thought was a gift of life," he said. "But, in fact, it has been a gift of death on the installment plan."

Bill Barichello, 59, of Maple Ridge was diagnosed with leukemia in 1986 and got the disease when he underwent a bone marrow transplant. Two years ago, he said, he found out he had hepatitis C as well as lung cancer and liver cancer.

"The effects are devastating," said the father of two, who works as a dispatcher for C.H. Cates & Son in North Vancouver. "I just hope this comes to closure very soon so we can put it aside and get on with our lives."

Pat Nicholson said her 25-year marriage ended when she found out she was infected after surgery. Now she's shunned by friends and family worried about being infected by the blood-borne disease, she said.

"My social life is completely down the drain," she said. "My daughter keeps my grandchildren more or less away from me. You feel like you've got the plague."

Shannon Lalonde of North Vancouver also cried as she explained how she was told by her doctor that her husband David wasn't likely get the disease but he recently tested positive.

Pat Palmer said victims should receive compensation for expensive medication, noting that she's taking Interferon, which costs \$1,500 for a three-month supply.

"It's not fair — I think we should be looked after one way or another," she said.

Lawyer David Klein, who represents 55 victims and gets calls from up to 30 other victims each week, said some of his clients have died.

"They need the money now — they can't wait," he said. "This tragedy occurred because of decisions made behind closed doors."

The victims' lawyers have presented a compensation plan to government, which proposes paying them between \$5,000 and \$20,000 initially, then have a fund available for people who are ill. It also suggests a separate fund set aside for those who become ill in the future — it takes up to 20 years for the full effects of the disease to hit.

15

# CAMP CHURCH & ASSOCIATES

## BARRISTERS

J.J. Camp, Q.C.\*  
David P. Church\*  
Joe Fiorante\*  
Andrew J. Pearson  
Sharon D. Matthews  
Ian G. Schildt

T. . . . . P . . . . .  
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FILE REF: 96015/001

February 12, 1998

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Dear Sirs/Mesdames:

Re: Endean et al. v. The Canadian Red Cross et al.  
S.C.B.C. Action No. C965349, Vancouver Registry

The provincial and federal lawyers asked us to attend a further meeting which occurred on Wednesday afternoon February 11, 1998.

This meeting was specifically held on a without prejudice basis so the contents of this note must be treated on a without prejudice basis. I also suggest that the contents of this note also be kept confidential.

Both sets of lawyers indicated that they felt progress was being made at the ministerial level. Last week they thought that the meeting may not go ahead since there were serious divisions between the provinces. This week, they believe some of those divisions have been resolved and progress is being made generally on a consensus approach to a compensation scheme.

There is a certain dichotomy growing in my opinion. The provincial lawyers have indicated that they recognize that they will have to deal with us to resolve our class action.

## CAMP CHURCH & ASSOCIATES

They are less concerned about any national ramifications. The federal lawyers indicate that there will be a universality across Canada and the British Columbia settlement will be part of a larger settlement. This dichotomy is not surprising. However, it does throw some light on another issue and that is the distinction between the 1986 - 1990 liability case and the liability case for the rest of the Hepatitis C claimants. I indicated that my duty was to protect and advance the interests of my class members. The federal lawyers indicated that there will be a limited amount of money to distribute to all Hepatitis C claimants across Canada.

The federal lawyers were interested in the cohesiveness of the network of Hepatitis C claimant lawyers across Canada and whether a consensus could be readily achieved if negotiations were undertaken. I indicated that I felt the network of lawyers could move expeditiously and we would strive mightily to achieve a consensus if that is what it took to break any negotiation log jam.

The British Columbia government lawyers were interested in knowing the exact number of claimants who had approached my firm to date and the nature of their symptoms. I was able to advise them that 312 claimants had sought our advice. Eleven of these claimants were seriously damaged by Hepatitis C. Thirty eight were relatively free of any symptoms but nevertheless tested positive. The remainder, 263, had significant but not disabling symptoms. These symptoms primarily consist of bouts of nausea, fatigue, stomach cramps, and general flu like symptoms on an episodic basis. Although the British Columbia government lawyers sought my advice on the quantum of damages for these claimants, I demurred for the moment until we had a chance to confer nationally. In my opinion, we ought to present a unified front on damages otherwise we run the risk of being "divided and conquered".

Events are unfolding quickly (witness the article on page A3 of the national edition of the Globe & Mail today, Thursday, February 12, 1998).

CAMP CHURCH & ASSOCIATES

I will set about to arrange a further conference call early next week.

Yours truly,

CAMP CHURCH & ASSOCIATES

By:

J.J. Camp



JJC:mf

CAMP CHURCH & ASSOCIATES

I will set about to arrange a further conference call early next week.

Yours truly,

CAMP CHURCH & ASSOCIATES

By:

J.J. Camp

JJC:mf

cc: Grant Kovacs Norell  
Attn: Bruce Lemer

16

# CAMP CHURCH & ASSOCIATES

## BARRISTERS

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February 18, 1998

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Attention: Paul Lamek, Q.C.

Dear Sirs/Mesdames:

Re: Endean et al. v. The Canadian Red Cross et al.  
S.C.B.C. Action No. C965349, Vancouver Registry

Sharon Matthews of my office kept notes of the salient points made during our conference call of February 18, 1998.

### Update on Status of Actions

The persons on the call were Harvey Strosberg, Bruce Lemer, Dawna Ring, Bill Selnes, Pierre Lavigne, Harvin Pitch, Michel Savonito, Clint Docken, Philip Tinkler, Angus McKinnon, Adrian Mahaffey, Ken Arenson, Sharon Matthews and J.J. Camp.

Ontario has now issued their Statement of Claim and intend to prosecute it vigorously.

In Quebec, the certification hearing commences February 23, 1998 and will last at least one week. Pierre Lavigne and Michel Savonito are reasonably confident of their chances of success.

In British Columbia, we have a pre-appeal hearing set for February 20, 1998 and we are continuing to vigorously press forward with the underlying litigation.

### CRC Initiations for Harmonization

Concerning the CRC request for harmonization, Quebec has been dealing with the CRC counsel and have advised CRC counsel of their position. They anticipate further discussions with counsel for the CRC.

## CAMP CHURCH & ASSOCIATES

In Ontario, Harvey Strosberg has discussed the issue with Bob Armstrong, counsel for the CRC. This was not as detailed a discussion as has taken place in British Columbia or Quebec.

Generally speaking, there was a consensus that certification of the class actions was a good vehicle for settling the HCV claims and so long as we were not giving up substantive rights, we would continue to explore the prospects of the CRC consenting to certification in Ontario and Quebec and abandoning their appeal in British Columbia.

After the conclusion of the conference call, I conferred with the Red Cross lawyers in British Columbia. I indicated the gist of our discussions and advised that there may well be differences between jurisdictions, particularly Quebec. Their response was that it was more important to harmonize some issues more than others. For instance, harmony of the common questions to be certified was perhaps more important than the class definition.

I indicated that it may be worthwhile to pursue consent certification on a jurisdiction by jurisdiction basis. They preferred not to do this but to harmonize if possible. In their view, harmonization would create a pressure point on the governments to settle the HCV claims, particularly because they view certified class actions as a benefit to both the claimants and the defendants for settlement purposes. In addition, in their experience with other class actions, settlement is much easier to manage and administrate through class actions than not.

They indicated that they would be having a conference call of the Red Cross lawyers late Thursday, February 19, 1998 and would confer further with me.

### Settlement Strategy

With respect to settlement strategy, there was a consensus that we should keep pushing to get the actions certified. Certainly, this would not preclude the governments from leaning on our clients to settle independently or opt out of the classes, but it does improve our bargaining position on behalf of our clients.

Bill Selnes reported that he had spoken with David Harvey who was intending to move to certify a class of pre-mid-1986 HCV claimants.

No one had reliable information as to which provinces were not prepared to contribute. After our conference call, Jeremy Beatty called me and advised that he was on television with the Minister of Health from Saskatchewan who stated publicly that the provinces were intending to come up with a sizeable sum of money to contribute to the settlement of HCV claims.



## CAMP CHURCH & ASSOCIATES

After our conference call, Bill Selnes had an informative telephone conversation with Carl Austman, the Chief of Staff for the Saskatchewan Minister of Health, Clay Serby, who, as you know, chaired the meeting of the provincial ministers of health. I have spoken with Bill Selnes. Enclosed is a copy of Bill Selnes' memorandum. I believe that the estimate of the number of persons infected being used by the Ministers of Health is too high. This makes it all the more important that we attempt to crystallize our numbers as quickly as possible. On the other hand, if the pool of money is going to be driven by an artificially high number of claimants but shared completely by a fewer number of true claimants, this may enure to the benefit of our clients.

With respect to public profile, I learned from another source that the provinces felt that they got a public black eye after their meeting when they should have been receiving accolades. This source assured me that the governments in Canada would be proposing a compensation plan within two weeks.

In the event this plan is universal, as I anticipate it will be, it is important, in my opinion, for lawyers to take the lead in speaking for the pre-1986 HCV claimants.

### Class Size

It is important that we figure out our class size with as much precision as possible. In British Columbia we are now reasonably certain that the class will not exceed 1,500. Some of these people will not be interested in any compensation and others will die in the meantime or opt out. The best guess is that the class will be somewhere around 1,000 to 1,200 when all the dust settles. Extrapolating this across Canada from the population ratio would suggest a national class size of something in the order of 10,000 to 15,000. However, the seropositivity rate in B.C. may be as much as double other parts of Canada and the class should therefore be reduced significantly. Bill Selnes has undertaken to make inquiries about the Saskatchewan notification program and report back to the group. Dawna Ring will attempt to obtain similar figures in Nova Scotia. Pierre Lavigne advised that the federal and provincial governments were supposed to submit information pertaining to class size in Quebec and he would share that information. J.J. Camp also indicated that there should be some hard published data coming from B.C. in the near future.

### Deceased Class Members

Harvey Strosberg raised the issue of class members who will die in the meantime. It is important that their cause of death be identified so that their beneficiaries and estate can recover damages. J.J. Camp said he would consider this issue and address it with the conference call members.

## CAMP CHURCH & ASSOCIATES

### Public Relations

With respect to public profile, there is a clear consensus that it is our clients who need to be front and centre and not the lawyers. However, there was less consensus on whether to keep pressure on the governments at this time. Ontario will probably not proceed at this time with any press conference as occurred in Saskatchewan, Alberta and British Columbia. Others felt that the pressure should be kept on. Bill Selnes will be meeting with the CBC later after the call and will advise that HCV victims and their lawyers should not be frozen out of the settlement process. Any provincial-federal government compensation scheme that is drawn up in a vacuum is not likely to find acceptance by the victims.

We should also negate vigorously the assertions by the provinces that they are contributing health care costs and home care to any settlement package. This argument can be turned around - the governments should have investigated the costs and benefits of surrogate testing in 1985 and 1986 if they were concerned about reducing health care costs.

Attached is a copy of a news release pertaining to an alleged cure for HCV. Dr. Sherlock, a respected Vancouver virologist, doubts the veracity of this report. Jeremy Beatty is also having the vires of the news release assessed by HCV doctors in Ontario.

I anticipate that a further conference call will be necessary within the next two weeks.

Yours truly,

CAMP CHURCH & ASSOCIATES

By:

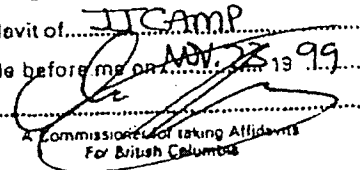
J.J. Camp

JJC:hp

17

**CAMP CHURCH & ASSOCIATES**  
BARRISTERS

J.J. Camp, Q.C.\*  
David P. Church\*  
Joe Fiorante\*  
Andrew J. Pearson  
Sharon D. Matthews  
Ian G. Schildt

This is Exhibit "R" referred to in the  
affidavit of JJCAMP  
made before me on NOV 28 1999  
  
A Commissioner for taking Affidavits  
For British Columbia

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FILE REF: 96015/001

March 4, 1998

**BY FAX**

Gignac, Sutts  
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P.O. Box 670  
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N9A 6V4  
Attention: Harvey T. Strosberg, Q.C.

Buchan Derrick & Ring  
#100 - 5525 Artillery Place  
Halifax, Nova Scotia  
B3J 1J2  
Attention: Dawna Ring

Elliott Rodrigues  
#304 - 150 York Street  
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Attention: Douglas Elliott

Kapoor, Selnes, Klimm & Brown  
P.O. Box 2200  
Melfort, Saskatchewan  
S0E 1A0  
Attention: Bill Selnes

Docken & Company  
215 Atrium II  
#840 - 6th Avenue South West  
Calgary, Alberta  
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Attention: Clint G. Docken

Tinkler Morris  
#304 - 150 York Street  
Toronto, Ontario  
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Attention: Philip S. Tinkler

Kenneth Arenson  
179 John's Street  
Toronto, Ontario  
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Attention: Kenneth Arenson

Teplitsky, Colson  
#200 - 70 Bond Street  
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Attention: Harvin Pitch

Pierre Lavigne  
Avocat  
440 Laurier Avenue, W.  
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K1R 7X6  
Attention: Pierre Lavigne, Q.C.

Michel Savonitto  
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H3B 4L8  
Attention: Michel Savonitto

**CAMP CHURCH & ASSOCIATES**

Klein, Lyons  
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Attention: David Klein

Genest Murray DesBrisay Lamek  
#700 - 130 Adélaide West  
Toronto, Ontario  
M5H 4C1  
Attention: Paul Lamek, Q.C.

Dear Sirs/Mesdames:

**Re: Endean et al. v. The Canadian Red Cross et al.**

A brief update.

The Canadian Red Cross formally abandoned their appeal of the certification in British Columbia. The appeal by the Federal and Provincial Crown on the issue of spoliation is the only remaining issue to be heard on appeal.

I am told that the Quebec class action was certified by consent but no negotiations have yet occurred in Ontario.

The lawyers for the CRC are anxious to have the litigation resolved on a peaceful basis if possible. I advised them that until it is resolved we will continue to press forward with the underlying liability case.

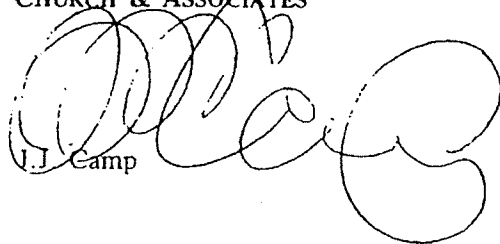
The Federal and Provincial Ministers of Health are continuing to confer. The best evidence I have heard suggests that they should be going public with a compensation package during the week of March 23rd.

Attached is a self-explanatory memorandum from Bill Selnes.

Yours truly,

**CAMP CHURCH & ASSOCIATES**

By:



J.J. Camp

JJC:hp

## memo from bill selnes

Date: 3/3/98  
To: Hep C Class Action  
Re: Telephone attendance upon Carl Austman

---

### 1.) PURPOSE OF CALL

As I had not heard any details recently I called Mr. Austman seeking an update on the governmental negotiations. He called me back today.

Please keep confidential the portion of the memo involving his comments on Durhane. I thought it would be useful to repeat what the provinces think of her involvement but would ask the comments remain confidential.

### 2.) MINISTERIAL NEGOTIATIONS

He advised me that they were now at the stage of negotiations with the Federal Government on several issues.

Part of the discussion is over the window period (class period of 1986-1990) and the time periods before and after. He said all are on the table. He said the provinces see no advantage to be out in the media on the negotiations.

I asked what discussion is taking place on parameters as I had understood from our last call, following the meeting of the Ministers last month in Toronto, that the parameters had been set and the remaining issue was the division of funding for the package.

- 2. -

He said that at the meeting last month the provinces set the parameters as they saw them. He continued that there are 3 groups of people and the provinces have views on what levels of compensation there should be for each group.

He said there are also discussions with the Red Cross as the Red Cross has their own issues and needs to be dealt with in compensation matters.

He said there is no further ministers meeting scheduled.

He stated that Mr. Serby, as Chair of the Provincial Ministers, had held a couple of conference calls on the issue. He said the current process is for the provinces to decide on an offer which Serby communicates to Rock and then Rock replies to Serby who passes on to the provinces and so on back and forth.

He stated they were working on completing a full announcement rather than bits and pieces.

He said the working group is still working on the nuts and bolts.

### 3.) PROCESS

I expressed my continuing concern that the process of resolution would be set back if an announcement is made of a package that cannot be recommended by lawyers to their clients.

He said the meeting in February of the Ministers was the first time they had been together to deal with the issue. He said they could have simply said they will deal with this by allowing the class actions to proceed but that was not their approach.

- 3. -

He said they were getting their position together and likened this to a labour negotiation where a position is established by each side and then you start negotiations. He asked me that do not the courts have to approve class action settlements. I agreed there has to be approval.

I saw the situation as different in that parties do not normally publicly announce positions and then sit down to negotiate a settlement.

He said normally there would be no press conference for parameters but this issue will have to have such a conference.

He said Durhane is not helping by phoning the media every 45 minutes and feeding misleading information. He thinks she has her own agenda involving the federal government.

#### 4.) ANNOUNCEMENT OF PACKAGE

He knows they had indicated they wanted to make an announcement by early March and that they have not met that target.

He said Rock had spoken of his own announcement if the provinces could not agree but he did not think that would happen anymore when he looked at what had happened in the federal budget and the level of priority given health issues in the budget.

He does not expect it to drag on much longer. He said there is no political will to delay and the media will not allow it to be delayed.

He was hopeful there would be an announcement by the end of next week; the middle of March.



18

**CAMP CHURCH & ASSOCIATES**  
BARRISTERS

J.J. Camp, Q.C.\*  
David P. Church\*  
Joe Fiorante\*  
Andrew J. Pearson  
Sharon D. Matthews  
Ian G. Schildt

This is Exhibit S referred to in the  
affidavit of JICAMP  
made before me on Nov 23 1999  
[Signature]  
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FILE REF: 96015/001

March 30, 1998

BY FAX

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Attention: Harvey T. Strosberg, Q.C.

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Attention: Dawna Ring

Elliott Rodrigues  
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Attention: Michel Savonitto

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Attention: David Klein

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M5H 4C1  
Attention: Paul Lamek, Q.C.

Goodman & Carr  
#2300 - 200 King Street West  
Toronto, Ontario  
M5H 3W5  
Attention: David Harvey

Dear Sirs/Mesdames:

Re: Endean et al. v. The Canadian Red Cross et al.

Attached are minutes kept by Sharon Matthews pertaining to our conference call March 30, 1998 along with file notes from my lunch with Ivan Whitehall on March 30, 1998. Most notably, he had no further details of the compensation proposal. He was prepared to consider disbursements incurred by us but he envisaged the payment of these disbursements to come out of the \$1.1 b.

I believe the lunch was constructive on a "get to know you" basis.

Yours truly,

CAMP CHURCH & ASSOCIATES

By:

J.J. Camp

JJC:hp

## MEMORANDUM

FROM: SDM  
TO: FILE  
CLIENT: HEPATITIS C  
RE: CLASS ACTION

---

DATE: March 30, 1998

### Minutes of National Class Counsel Conference Call - March 30, 1998

#### Roll Call:

J.J. Camp (JJC)  
Sharon Matthews (SDM)  
Bruce Lemer  
Candace Wall (David Klein's office)  
Bill Selnes  
Tom Buglas (Clint Docken's office)  
Ken Arenson  
Harvey Strosberg (HS)  
Harvin Pitch  
Angus Mackinnon  
Pierre Lavigne (PL)  
Michel Savonitto  
David Harvey  
Doug Elliott  
Phillip Tinkler  
Dawna Ring

JJC reported that in B.C. we argued the appeal. The only issue which went forward was spoliation. We are pushing on the litigation front and we have a case management conference in a few weeks.

PL reported that on February 23 the Quebec class was certified with a January 1, 1986 start date. There was no opposition to the certification.

HS reported that the Ontario group had appeared before Winkler J. last Thursday. HS met with the counsel for the Federal Attorney General and the CRC on Thursday. They

asked whether the Federal government would deliver up epidemiological information and provide funds to hire an epidemiologist to assess the information.

JJC said that the funding request should be broad and should cover all reasonable disbursements to be funded by the governments.

JJC advised that Ivan Whitehall is the lead negotiator for the Federal Government. The federal team will also include Sandy Graham and a 3rd person who is a female junior lawyer who will be involved in a research capacity.

JJC reported that on the provincial side, the B.C. counsel is pushing for a small negotiating committee which will be comprised of representatives from B.C., Ontario, Quebec and one or 2 others.

JJC asked if anyone had any thoughts on how our team should be composed - he said that in his view it should number approximately 5 or 6 persons.

PL said that they still had to sort out the extent to which Quebec would negotiate in common. He said they are not saying they will not, just that they have not decided yet how much to subordinate their clients to a national negotiating team. JJC said that the Federal Government conveyed to him that it intended to negotiate on a pan-Canadian basis.

HS said that the first issue is that the classes must be squared up. In Ontario, they are not prepared to negotiate until they are certified. They want a consent certification immediately. He added that we need congruity on the period across the country which means that they need to amend their pleadings to go back to January 1, 1986 and B.C. needs to amend the class certification.

JJC said that he felt that was an issue that should be discussed with David Klein and David Harvey.

David Harvey said he does not have any difficulty with the Ontario group amending the 86-90 class back to January 1, 1986.

HS said that while the settlement discussions go ahead, the advertising of the class with provision for opt-outs should get under way. We should also set up some system for taking calls and collecting client information. He does not believe that any of the firms have the resources to do it ourselves and that a commercial marketing firm may have to be retained to do the work. The federal government should pay for that also.

JJC said that with respect to notification, he thought it was important that those jurisdictions which do not yet have notification programs to convince their governments to commence that process immediately. The most important information for immediate purposes is the size of the class. Notification of opt-outs can wait until the negotiations are more advanced.

HS said that the advertising campaign will be massive and very expensive.

SDM said that in B.C. we got the Court to order that the governments pay for the notification.

HS proposed that we meet to sort out issues such as these and to form sub-committees to work on them. There was general agreement for such a meeting. A meeting was set for April 7, 1998 at 8:30 am at the offices of Paul Lamek (130 W. Adelaide Street, 7th Floor) in Toronto.

JJC outlined some other issues that needed to be addressed: exigent cases; stratification of cases in terms of symptomology, age and years since transfusion; management of the deferral fund; proof of causation and a timeframe for negotiations.

PL, JJC and HS will prepare lists of agenda items. HS will collect the agendas and prepare a master agenda.

HS raised the issue of whether the people outside the '86-90 timeframe should be included in the meeting. JJC indicated that in his view, the conflict is now crystallized. David Harvey pointed out that he also represents hemophiliacs who are within the timeframe for compensation.

JJC raised the role of the CRC at the negotiations. HS said that Bob Armstrong had indicated that they were still negotiating over the assets and there may be more money forthcoming. JJC said in B.C. the provincial government is of the view that all of the CRC assets are spoken for but he had the sense from Bob Rae that there may be some insurance money available. Ken Arenson said he thought they were suing over the insurance money.

Ken Arenson also advised that he understood they were considering third partying fractionators - which would only affect the hemophiliac claims.

David Harvey advised that there were approximately 1100 hemophiliacs, 100 of which did not receive blood products during the timeframe. The group is readily identifiable and there are very few notice problems or need to advertise.

Dawna Ring asked David Harvey if he was satisfied he did not have a conflict between his hemophiliac group and his pre-86 transfused group. David Harvey said he had thought about it and he was satisfied that at this time he does not.

JJC said that the Federal Government anticipates that HeCSS and the hemophiliacs will want to be at the bargaining table. David Harvey said that the hemophiliacs want to be at the bargaining table through him.

JJC commented that HeCSS also has a conflict. SDM said that HeCSS's mandate has always been compensation for all infected, so officially they do not have a conflict but it would not be surprising if an internal rift develops at HeCSS soon.

Doug Elliott said that the media wanted to know what we are going to do. He asked for direction from the group on how much information to provide. JJC said he thought we should be positive and say that we are ready, willing and able to sit down and negotiate.

HS said that he wanted to ensure that our discussions remain privileged and he does not think we should tell the media what we are doing or when we are meeting.

JJC indicated that he had taken steps to obtain the tape of Friday's press conference as well as Clay Serby's interview later on NewsWorld.

Bill Selnes indicated that he had spoken with Serby's chief of staff and they do not have a lot more planned than what has been announced.

19



## MEMORANDUM

FROM: JJC  
TO: FILE  
CLIENT: HEPATITIS C  
RE: CLASS ACTION

DATE: March 30, 1998

---

### Lunch Meeting - March 30, 1998 with Ivan Whitehall

Ivan Whitehall indicated he will be the lead negotiator for the Federal Government. He will have a small team. Another member of his team will be Andre Lesperance who is the lead lawyer in Quebec on the Hepatitis C class action.

He raised the issue of retaining a high profile mediator to get us over any rough spots. He said he has used this approach before with success. I indicated that we should attempt to resolve all rough spots by face-to-face, good faith negotiations if at all possible. He asked me to raise this with the group. He mentioned such names as Dubin from Ontario or Gold from Quebec or McIntyre from British Columbia.

He indicated that he felt there might be some recovery prospects against Drs. and hospitals and that this should be explored. I demurred.

He said that negotiations could begin within approximately three weeks. He will be meeting with the provincial representatives this Wednesday in Toronto and the negotiating team for the provinces will be chosen at that time. In all probability Cliff Prowse from BC will be on the negotiating team for the provinces.

He asked what role the CRC should play. I indicated that they should be at the negotiating table for obvious reasons. He indicated that the CRC has just sued the Federal Government for indemnification. He is not certain where this is going. He otherwise agreed that they should be at the negotiating table.

He raised the subject of recovery by hemophiliacs and said that this complicated matters but he did not see it as an overly troublesome issue.

I indicated that we would be meeting next Tuesday in Toronto and that we would be establishing an agenda for items to be negotiated. He was very keen on getting a consensus

from us as to the items to be negotiated. I said that I would provide that document to him once it had been formulated.

He said that he would be prepared to come to British Columbia to negotiate face-to-face but his preference would probably be to have negotiations take place in various political jurisdictions in Canada such as the East Coast, Quebec, Ontario and British Columbia. I said I did not have any difficulty with that. He indicated that Quebec may require that the negotiations be conducted in French and English. I indicated that I would not have any difficulty with that.

I approached the subject of class size with him. They have virtually no information on class size. Nor, does he have any information on further details pertaining to the \$1.1 billion. In his opinion, it would be up to us to negotiate the details of the offer. I indicated to him that we would be needing to expend funds to identify class size and to pay for other case expenses. He said that was a subject to be negotiated but in all probability he would push for those funds to come out of the \$1.1 billion. I emphasized the need to get class size identified. He recognized that that was a critical element but it may take a good deal of time to identify the exact class size and we may not have the luxury of that much time.

We touched on a number of other items which will need to be addressed in negotiation such as:

- (a) exigent claims;
- (b) the exact definition of who is in the class;
- (c) how to deal with hemophiliac cases;
- (d) how to handle deferment;
- (e) the size of the upfront payment. Whitehall in particular emphasized that the larger the upfront payment the less there will be for the deferred fund; and
- (f) the proof of recovery such as whether a traceback to a Hepatitis C positive donation will be required.

None of these subjects were discussed in detail only that they would probably form agenda items for negotiation.

As an impression, it is clear to me that Ivan Whitehall does not have a large storehouse of HCV information under his belt at this time. He appears to be earnest and anxious to get the matter concluded. Clearly, he is aware of the political overtones and his marching

orders are to avoid litigation if at all possible. I also get the sense that they believe they can weather the pre-86 storm. For my part I indicated that we would probably become allies on that subject although we may not be able to be very vocal. I get the impression that Whitehall will become the lead negotiator on behalf of all of the defendants and not just the Federal Government. I garnered that from Cliff Prowse on a private basis.

20

**CAMP CHURCH & ASSOCIATES**  
**BARRISTERS**

J.J. Camp, Q.C.\*  
David P. Church\*  
Joe Fiorante\*  
Andrew J. Pearson  
Sharon D. Matthews  
Ian G. Schildt

This is Exhibit - U - referred to in the  
affidavit of JJCAMP  
made before me on MAR 23 1999  
A Commissioner for Taking Affidavits  
For British Columbia

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FILE REF: 96015/001

March 31, 1998

VIA FAX: (519) 258-9527

Gignac Sutts  
600 Westcourt Place  
251 Goyeau Street  
P.O. Box 670  
Windsor, Ontario  
N9A 6V4

Attention: Harvey T. Strosberg, Q.C.

Dear Sirs/Mesdames:

Re: Endean et al v. The Canadian Red Cross et al  
SCBC Action No. C965349, Vancouver Registry

Without any order of priority, I suggest the following list of items be included on our agenda for our Tuesday meeting:

- (a) harmonization and certification of 1986-1990 class;
- (b) structure and composition of plaintiffs' negotiating committee;
- (c) appointment of a mediator;
- (d) class size - at a minimum broken down into BC, Quebec and the rest of Canada;
- (e) government and CRC involvement in identification and notification of class members;
- (f) what position to take vis-a-vis pre-1986 and post-mid-1990 HCV claimants;
- (g) what position to take vis-a-vis 1986-1990 hemophiliac claimants;
- (h) what position to take vis-a-vis 1986-1990 HIV claimants;
- (i) what position to take vis-a-vis counsel acting for hemophiliac, HIV and non-1986-90 HCV victims;

50256.1

\* Denotes Law Corporation

## CAMP CHURCH & ASSOCIATES

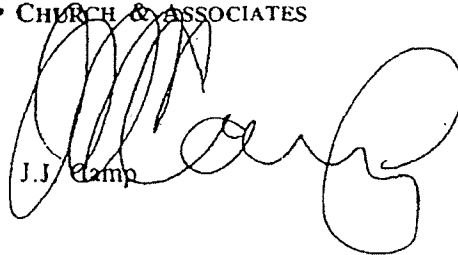
- (j) timing of commencing negotiations;
- (k) target date for concluding negotiations;
- (l) role of the CRC in negotiations;
- (m) handling and sharing of disbursements and case expenses by co-counsel;
- (n) willingness of governments to fund disbursements and case expenses including epidemiological, actuarial and medical consultants fees;
- (o) retainer of specific consultants;
- (p) class counsel fees;
- (q) whether defendants will pay class counsel fees;
- (r) modelling the progress of HCV;
- (s) stratification of compensation for claimants by such factors as age, symptoms, etc.
- (t) identification of factors to go into compensation including pain and suffering, loss of amenities, stress and strain of progress of disease, special damages (interferon costs), past wage loss, future wage loss, impairment of earning capacity, past care, future care, gross-up for income tax, management fees;
- (u) handling of exigent cases;
- (v) funding and management of deferral program;
- (w) how to handle breakthroughs in HCV treatment;
- (x) methodology for assessing individual damage claims;
- (y) required proof for recovery on the issue of causation;
- (z) research into admissions of liability made by government defendants;
- (aa) litigation strategy pending and during negotiations.

Yours truly,

CAMP CHURCH & ASSOCIATES

By:

J.J. Camp



JJC:hp

21

# CAMP CHURCH & ASSOCIATES

## BARRISTERS

J.J. Camp, Q.C.\*  
David P. Church\*  
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Noted V  
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FILE REF: 96015/001

April 9, 1998

BY FAX

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Grant Kovacs Norell  
930 - 1040 W. Georgia Street  
Vancouver, BC  
V6E 4H1  
Attention: Bruce Lemer

Dear Sirs/Mesdames:

Re: Endean et al. v. The Canadian Red Cross et al.  
S.C.B.C. Action No. C965349, Vancouver Registry

Enclosed is a copy of minutes of our meeting on April 7, 1998 taken by Sharon Matthews. Please let me know if there are any egregious errors or omissions.

You will see that I am copying Clint Docken. I spoke with Clint on April 9, 1998 and he confirmed that his firm will be divesting itself of all pre-1986 and post-1990 claimants. Hence, he is back in the fold so to speak.

I have spoken with Ivan Whitehall who proposes to hold the first negotiating meeting in Ottawa on April 23, 1998. I am presently determining exactly who will serve on our negotiating committee and their availability for this meeting. I have advised Mr. Whitehall of our request for funding for expenses as discussed at our meeting. So long as the information is shared, Mr. Whitehall will recommend it to the defendants.

The lawyer representing the British Columbia provincial government advised us that 1,550 persons have been identified as Hepatitis C positive as a result of the government notification campaign aimed at persons who received transfusions between January 1, 1986 and June 30, 1990. This figure excludes persons who already knew they were Hepatitis C positive before the campaign began and were not tested as a result of receiving notice in the campaign.

The minutes identify the various sub-committees which now need to be populated. I have already received some requests to serve. I request that each of you who wish to serve on one or more of these sub-committees write to me to identify the sub-committee or sub-committees on which you wish to serve. Please feel free to confer among yourselves to ensure that we are not overloaded or understaffed. If it turns out that we need to add or subtract from

## CAMP CHURCH & ASSOCIATES

the sub-committees, we can do so in a conference call which I propose to hold within the next two weeks. At the risk of appearing to be a hard task master, I have assured Ivan Whitehall that that this matter (HCV claims) is at the top of our respective agendas and that we would act swiftly on it. Hence, it is important that you be in a position to devote the necessary time to any sub-committee on which you serve.

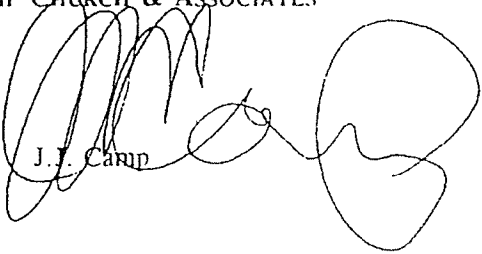
Ivan Whitehall advised me of the obvious during our conversation on April 9, 1998 and that is that these negotiations are highly sensitive and highly political. Some recent press was not "helpful" to the process. I fully concur with Harvey Strosberg that we retain a very competent public relations advisor to advise, among other things, on media relations and communications with the media. May I be so bold as to suggest a moratorium on providing comments to the media for at least the next short while. I have suggested that media relations be an agenda item at our first negotiating session with the defendants on April 23, 1998.

Yours truly,

CAMP CHURCH & ASSOCIATES

By:

J. J. Camp



JJC:hp

**MINUTES OF MEETING OF CLASS COUNSEL  
APRIL 7, 1998, TORONTO, ONTARIO**

**Present:**

J.J. Camp, Q.C.  
Sharon Matthews  
Harvin Pitch  
David Harvey  
Bruce Lemer  
Philip Tinkler  
Douglas Elliott  
Pat Speight  
Harvey Strosberg, Q.C.  
Paul Lamek, Q.C.  
Bonnie Tough  
Dawna Ring  
Bill Selnes  
Bertrand Paiement  
Michel Savonitto  
Pierre Lavigne  
Clint Docken, Q.C. (by conference call)  
Tom Buglas (by conference call)

It was agreed that the meeting was on a "without prejudice" basis, the discussions were between counsel for the purposes of developing strategy and the minutes and what was aid by counsel would not find their way into any affidavits.

**Conflicts**

Dawna Ring acts for the HIV secondarily infected spouses and children. On behalf of her clients, she has been lobbying the federal government to open up the HIV Extraordinary Assistance Plan ("EAP") to secondarily infected spouses and children. She is of the view that the funding is outside the HCV funding. There are about 100 secondarily infected spouses and children across Canada. In Nova Scotia there are only 3. There are no other lawyers that she is aware of. She intends to negotiate this issue separately.

Harvin Pitch stated that the press release indicates that the funding for the HIV secondarily infected is separate from the HCV compensation. JJ Camp said that the ads which the federal government are placing indicates that the HIV secondarily infected funding is part of the \$1.1 billion. Doug Elliott said that at the press conference to

announce the HCV package, Rock stressed that it was a separate program and that it was federal money only.

Pierre Lavigne said he guessed the question of whether there is conflict comes down to whether the funds come out of the same envelope or not.

Dawna Ring said she does not think it is a conflict unless she must still negotiate for the HIV secondarily infected. As far as she is concerned, the negotiations are finished and the amounts of compensation are set so she cannot negatively affect the HCV compensation.

JJ Camp said that in light of the amount in issue and the circumstances, he does not view it as a serious conflict or any conflict at all. Harvey Strosberg said that he does not view it as conflict at this time.

Bruce Lemer said he would like us to monitor the situation.

The more pressing issues on conflicts are: first, the counsel who represent pre-86 transfused HCV people and, second, hemophiliacs in the 86-89 timeframe.

Dawna Ring and Bill Selnes advised they have sent all of their pre-86 and post '90 clients to David Harvey and David Klein.

JJ Camp advised that he has taken the position with David Klein that he had a serious potential conflict.

Pierre Lavigne said that a firm in Quebec, Loisson (sp.?) Belanger, has started a class for all pre-86 and post '90 persons. He agrees there is a conflict.

Bonnie Tough stated that in her opinion she has no conflict on the 86-90 issue, because the hemophiliacs she represents are included in the package. Having said that, with respect to the pre-86 and post-90 transfused persons, there is a conflict if you assume that the package is a certain size and will remain that size. In her view, at this time there are too many hypotheticals built into the conclusion that a conflict exists.

A discussion ensued about the conflict and analogies were discussed pertaining to acting for two persons in an mva, with limits problems and without limits problems.

Harvey Strosberg said that the lawyers who represent 86-90 transfused people act for that group and must assess this offer. The lawyers who act for people before 86 and after 90 must do one of three things for their clients: bring them into the \$1.1 billion, get more money added, which is also something the lawyers for the 86-90 group may be doing,

and third, advocate for compensation on a social basis, which is different from the legal basis on which the 86-90 group seeks compensation.

David Harvey stated that in his opinion the conflict becomes real only if you assume that the compensation is fixed at \$1.1 billion and there is no more money.

JJ Camp said that the sense of the meeting is that the counsel who represent the 86-90 transfused persons perceive a conflict and want to guard against the dilution of any settlement fund by those who were transfused prior to 86 or after 90.

The discussion then turned to the potential conflict with hemophiliacs. Doug Elliott pointed out that the issue is really the product that persons received (ie: concentrates), rather than the disease from which they suffer. He said that persons who received multiple donor products frequently must have separate representation because they raise different issues including a different liability case, different causation issues and they may have already qualified for compensation under the MPTAP.

JJ Camp stated that none of the certified cases include claimants who received fractionated products.

Bonnie Tough said that the hemophiliacs are distinct. The hemophilia cases may resolve faster in part because all of the class members are known.

Bonnie Tough intends to start a separate class action from David Harvey's for hemophiliacs who received product from 86-90.

Strosberg pointed out that her case is substantially different from the transfused 86-90 persons. The hemophiliac case is substantially more complicated. The transfused persons case will always have the option of going to trial and winning, where the hemophiliac case may need to be settled sooner.

It was agreed that an effort would be made to make the boundaries between the classes as seamless as possible, but that some overlap might occur. Bonnie Tough and Doug Elliott will meet on April 8, 1998 to sort that issue out.

Tom Buglas said that they were not sure where they (in Alberta) would go with their pre-86 claims. JJC advised that the consensus was that they could not continue to act for both pre-86 and 86-90 transfused persons. JJ Camp agreed to speak with Clint Docken about it, but in the meantime Buglas cannot stay on the telephone and participate in the remainder of the discussions. Buglas said that he assumed that in the event that they divested themselves of their pre-86 clients, the minutes of the meeting would be made available to them. The call was then terminated.

David Harvey said he would like to be kept informed about the harmonization issue. It was agreed that Douglas Elliott would be a liaison for the immediate future.

At that time, David Harvey and Bonnie Tough left the meeting.

### Update

JJ Camp reported that in BC, the spoliation appeal was successful by the defendants (reasons attached). The Court of Appeal said that there is no cause of action in spoliation in BC, but that we can get all the relief we want, including punitive damages, through negligence. We will be seeking leave to appeal to the SCC.

In BC we have a case management conference in the next week or two at which time we will be setting a trial date and deadlines for document discovery.

Harvey Strosberg reported that in Ontario the motion for certification was adjourned. He suspects they will get a consent certification and the motion will be brought on as soon as possible.

Pierre Lavigne reported that in Quebec they will be publishing their notice within the next two weeks. The opt-out date, by statute, is 6 months from the date the notice is published. They will be filing their statement of claim before May 26.

Harvey Strosberg asked Pierre Lavigne if they have thought about having the federal government pay for the advertising of the class. Pierre Lavigne said they had not, because they already have funding for the notice program.

In BC, the order provides that the federal and provincial governments will pay for the advertisement of the class.

### Negotiations

JJ Camp referred to the notes of his meeting with Ivan Whitehall which he had distributed. The question is whether to negotiate as a team as the federal government prefers.

Pierre Lavigne said that he has one reservation which is that he wants to avoid being caught in a competition for provincial funds if the distribution of the disease does not match the population distribution across Canada. As long as the funds are distributed on a per claimant basis, rather than a per capita basis, he does not see any problems in negotiating as a team.

Harvey Strosberg raised the issue of the size of the team. Pierre Lavigne said he thought there should be 2 representatives from each of the classes certified. JJ Camp said he thought a smaller team was best. It was agreed that the negotiating team would be composed of 1 member from BC, 2 members from Quebec and 2 members from the Ontario class.

JJ Camp advised that the other side is very keen on moving swiftly and that it is critical that Ontario get certified as soon as possible to facilitate the negotiations.

It was agreed that we should not set a target date to conclude negotiations.

With respect to the CRC the consensus was that they should be involved in the negotiations. We need to determine what insurance and assets the CRC has and we need to have a sub-committee explore that issue. Harvey Strosberg offered to raise the issue of the CRC's role with CRC counsel, Bob Armstrong, and determine if they are involved and if they are making a contribution.

JJ Camp advised that Bob Rae had told him that there is some insurance and Ivan Whitehall advised him that the CRC has commenced an action against the federal government for indemnification.

It was agreed that a sub-committee be established to search for other sources of money.

Lavigne asked if anyone had any HIV cases which are competing for CRC money. Doug Elliott and Harvey Strosberg each have one HIV case. Those cases involve manufacturing issues. There 10 cases outstanding in Ontario and no others in other Canadian jurisdictions.

JJ Camp advised that Ivan Whitehall expects us to emerge from this meeting with a draft list of agenda items to be negotiated.

Ivan Whitehall also raised the issue of CMPA money being contributed to the pie. Pierre Lavigne said he thought that the governments might take a release and an assignment of the cause of action against the doctors. Harvey Strosberg said that the Dubin report on the CMPA reserves was flawed and that in his view, the CMPA is probably under reserved. If there is a prospect of suing the CMPA, we should be doing the suing.

With respect to interest groups, JJ Camp advised that Ivan Whitehall says they will want to be at the table. The two major interest groups with which we have to deal are CHS and HéCSC. A consensus was reached that we should only deal with CHS through Bonnie Tough.

Douglas Elliott advised that Jeremy Beaty does not expect to be at the table but does expect to represent those who are not included in the package. A consensus was reached to maintain good relations if at all possible with HeCSC.

A "Interest Group" sub-committee will be established with Douglas Elliott, Phillip Tinkler and Sharon Matthews as the members to liaise with HeCSC and Bonnie Tough.

A consensus was reached that we would tell the government that we will sit down with lawyers to negotiate in private and without prejudice negotiations. We will do a "dog and pony show" if necessary, but we will not conduct any negotiations in public.

JJ Camp advised that Ivan Whitehall suggested a mediator be agreed upon to smooth over rough patches. A consensus was reached that JJ Camp advise Whitehall that in our view it is premature to appoint a mediator.

### Structure of the Class

On the topic of harmonization, JJ Camp advised that BC needs to expand back to January 1, 1986 and he will be attending to that. He asked Pierre Lavigne to send us a copy of the Quebec consent certification order.

Pierre Lavigne advised that the Ontario class has persons transfused in Quebec. Harvey Strosberg said he would review that issue.

Harvey Strosberg raised the issue of Family Law Act claims, which are claims for family members who have suffered loss as a result of the infection of a family member. Pierre Lavigne advised that Quebec does not have such claims. Sharon Matthews advised that B.C. only has "in trust" claims for damages.

It was agreed to strike a sub-committee on harmonization.

### Funding and Damages

Harvey Strosberg proposed that we approach the federal government to fund research into class size and modelling of the disease.

JJ Camp indicated that he thought we would find an open door on that issue, as long as the funding comes out of the \$1.1 billion.

A consensus was reached that we establish a committee to deal with analysis of compensation and retaining experts.



JJ Camp raised the issue of what to do about sharing disbursements if the government says no to funding our analysis of the offer. It was agreed that if the government says no, we will not engage in negotiations. With respect to disbursements incurred so far, it was agreed that we sort them out at the end of the day, with the exception of on-going disbursements which we should get the defendants to pay for.

The issue of exigent damages was addressed. Harvey Strosberg questioned how they could be paid out without a settlement in place. Various options were discussed. It was agreed that this would be considered by the negotiating committee and be on the agenda for negotiation.

It was agreed that the issue of methodology of assessing damages cannot be addressed at this time but will be on the agenda for negotiation. Harvey Strosberg indicated that whatever the methodology, the government should be excluded from the assessment of damages.

### Notification

JJ Camp raised the issue of having a cross-Canada notification program done, similar to those done in B.C., Saskatchewan and Nova Scotia.

Harvey Strosberg said we should set up an advertising campaign the way we want the class advertised and get the governments to pay for it. It can include a 1-800 number routing the calls to our various offices. We should also have a centralized organization to intake and to gather information from the claimants. We will also need a media consultant to advise us on how to advertise the class and deal with the statements we make to the public.

JJ Camp said there are two issues: one is statutory notification and the other is advertising to get the class members out of the woodwork.

Dawna Ring said that the Nova Scotia experience indicated that the notification campaign took too long and produced little useful information.

Pierre Lavigne proposed we get lookback and recipient information from the CRC because everytime the CRC is advised of an HCV positive donor or recipient, it looks back to all the other donors and recipients attached to that person.

It was agreed that we would establish a sub-committee on notification and advertising.

### Deferral

It was agreed that the sub-committee on Class Size, Disease Modelling and Damages would address this issue.

### Liability

JJ Camp raised the issue of causation. Douglas Elliott advised that the MPTAP required proof of transfusion, HIV positive test, and a doctor to certify no other risk factors.

Dawna Ring advised that IV drug use is a sensitive issue and we should be prepared to concede that IV drug use excludes a claimant from compensation unless a positive traceback is found.

It was agreed that our opening position was that causation would be by proof of transfusion from 86-90 and a HCV positive test.

JJ Camp is obtaining tapes of the press conference to announce the package and Serby's interview on NewsWorld for the purpose of establishing admissions of liability.

A committee was struck to work on the liability case, including admissions.

### Counsel Fees

A discussion of the public relations importance of this issue took place. Harvey Strosberg pointed out that it was important that this be dealt with properly, and we probably want media relations assistance on this issue.

It was agreed that all counsel would send copies of fee agreements to JJ Camp, who would collect them for discussion by the negotiating committee.

### Sub-Committees

In summary, the following committee and sub-committees were established:

- (a) Negotiating Committee
  - 2 from Quebec class, 2 from Ontario class, 1 from BC class
  - also to deal with harmonization of class counsel fees
- (b) Search for Other Sources of Funds Sub-Committee
- (c) Interest Group Liaison Sub-Committee
- (d) Jurisdiction and Harmonization of Classes Sub-Committee

- (e) Analysis of Class Size, Disease Modelling and Damages Sub-Committee
- (f) Notification and Advertising Sub-Committee
- (g) Liability Sub-Committee

It was agreed that each class would advise J.J. Camp by April 13, 1998 of the members they want on the Negotiating Committee and the Sub-Committees.

**Next Meeting**

The next meeting will be by conference call as needed.

JJ Camp will disseminate to the Negotiating Committee a draft agenda and draft letter to Ivan Whitehall.

22

**CAMP CHURCH & ASSOCIATES**  
BARRISTERS

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W  
J.J. CAMP  
made before me on Nov. 23, 1999  
A Commissioner for taking Affidavits  
For British Columbia

FILE REF: 96015/001

March 11, 1999

Gignac, Sutts  
Attention: Harvey T. Strosberg, Q.C.

Beaton, Derrick & Ring  
Attention: Dawna Ring

Elliott & Kim  
Attention: Douglas Elliott

Kapoor, Selnes, Klimm & Brown  
Attention: Bill Selnes

Docken & Company  
Attention: Clint G. Docken, Q.C.

Tinkler Morris  
Attention: Philip S. Tinkler

Kenneth Arenson

Teplitsky, Colson  
Attention: Harvin Pitch

Genest Murray DesBrisay Lamek  
Attention: Paul Lamek, Q.C.

Grant Kovacs Norell  
Attention: Bruce Leher

Pierre Lavigne

Marchand, Magnan, Melançon, Forget  
Attention: Michel Savonitto

Hodgson Tough Shields DesBrisay O'Donnell  
Attention: Bonnie Tough

Dear Sirs/Mesdames:

**RE: HCV NEGOTIATIONS**

I enclose a copy of my memorandum pertaining to deliberations at the recent CASL Viral Hepatitis Consensus Meeting which took place on March 5 and 6, 1999.

Yours truly,

CAMP CHURCH & ASSOCIATES

By:

Sharon D. Matthews

SDM/hp

ODMA GRPWISE CC DOM CC POSSDATA 58762 1

\* Denotes Law Corporation

## MEMORANDUM

TO: JJC  
FROM: SDM  
CLIENT: HEPATITIS C  
MATTER: CLASS ACTION

DATE: March 10, 1999

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### Points of Interest from the CASL Viral Hepatitis Consensus Meeting March 5-6, 1999

#### Background

The meeting was convened by the Canadian Association for the Study of the Liver to review several practice questions and develop consensus guidelines for physicians who treat viral hepatitis. The meeting covered the following topics:

**Hepatitis B:** epidemiology, natural history, treatment

**Hepatitis C:** natural history, treatment, fatigue, sexual and vertical transmission

**Chronic Hepatitis:** management of Hepatitis B and Hepatitis C

**Miscellaneous:** Hepatitis G infection, TTV infection, Viral Hepatitis in Children, Combined Infections (HIV/HCV, HIV/HBV, HCV/HBV), Vaccinations for HBV and HAV

Each subtopic was the subject of a review of literature by a hepatologist, gastroenterologist, virologist, microbiologist, pediatrician, etc. After all of the presentations on the topics in one group, a panel convened to discuss a series of questions, most of which had been the subject of a previous set of consensus guidelines. The Chair (Morris Sherman) then sought a consensus on the topic from the panel and/or the audience. Following that, a group of rapporteurs met and developed the draft consensus guidelines. Lastly, the rapporteurs reported back to the large group and a discussion about the wording and accuracy of the report ensued.

The consensus guidelines will be published and sent to all attendees, and will be available on the CASL website. Of interest, last month the European Association for the Study of the Liver (EASL) and held a similar conference. Those consensus guidelines are available on the EASL website and I will try to download them.

I will not report exhaustively on the topics and the discussions in this memo, in part because the discussion was so free flowing and, at times, divisive, that it was difficult to take notes and also because many topics, although interesting, do not impact on our compensation plan. The purpose of this memo is to report on the areas that impact our compensation plan and management of our class members' files directly. I am also including points which arose out of discussions I had with various attendees before and after the conference.

Most of the medical names in HCV in Canada were present, including Morris Sherman, Jenny Heathcote, Victor Feinman, Sam Lee, Gerry Minuk, Richard Schreiber, Linda Scully, Chris Sherlock and Bernard Willems. Frank Anderson was to serve as a panelist but was unable to attend. In addition, HeCSC had a board member in attendance, as did CHS, the Canadian Liver Foundation, and the Canadian Thalassemia Associations. Martin Tepper from Health Canada (LCDC) was present, and two Health Canada Legal Services lawyers were listed as being present. They were the only other lawyers other than me on the attendees list. CASL was careful to point out that no pharmaceutical companies had sponsored the conference and there was no advertising permitted. There were at least a dozen pharmaceutical representatives at the conference.

### General Impressions

Most of the panelists and speakers concentrated on the "scientific", controlled experiment based data. Reports of clinical observations were criticized or dismissed as being anecdotal and insufficient to form the basis for a recommendation. In a few instances, where there was no scientific data on which to base a recommendation, the panelists chose to make no recommendation, instead of trying to reach a consensus based on their clinical experience. There were contentious discussions over several topics and widely divergent opinions. Despite this, the attendees managed to form a consensus on most issues.

It was clear that although these physicians prefer to rely on the scientific data for their diagnosis and management of patients, they are still on a steep learning curve and are in a quandary as to how to manage some patients because hepatic viral diseases are still not understood.

Availability of testing, policy on protocols and treatment vary widely across Canada. Some of these difficulties and how they may impact our clients and compensation under the plan will be discussed below.

Finally, the physicians were constantly asking about the costs of various tests and treatments and looking for the most economical way to get to the bottom of an issue, even if it was not the best test or treatment option.

### Natural History of the Disease

Bernard Willems (I think he was retained by the federal govt. at one point) presented this topic. His introductory remarks were that the disease is slow, death is linked to the appearance of cirrhosis (becomes far more likely when cirrhosis is established, not just clinically, but statistically), and the progression is unpredictable.

Willems outlined some problems with developing a model, which include a 9-52 year progression to cirrhosis, with a mean of 20 years, 29 years mean time to liver failure, and the question of whether or not a patient who does not develop cirrhosis after a particular period of time will ever develop cirrhosis. To highlight this problem, Willems said that the literature indicated that persons infected through transfusion who have not developed cirrhosis 18 years post-transfusion have no difference in mortality rate than their non-HCV positive transfused peer, but those who develop it 20 years after transfusion have a 4% per annum mortality rate while those who are not HCV positive have 1.7% mortality rate 20 years after transfusion.

Overall, Willems indicated the rate of progression to cirrhosis is 1% per year. The biggest indicator of the likelihood of progression to cirrhosis is stage 3 fibrosis.

The question of whether, given enough time on this planet, all HCV infected persons will progress to cirrhosis is unsolved. One school of thought is that everybody progresses to cirrhosis, but at different rates (fast and slow fibrosers). Fast fibrosers have a mean of 11 years. Slow fibrosers have a mean of 100 years. It seems to me that saying there are some fibrosers who take 100 years to get to cirrhosis is the same as saying there are some people who will never progress to cirrhosis because they will not live long enough. The second school of thought is that some people do not progress at all, and only 20-50% of the population will progress, given enough time. I do not believe there is any practical difference in these schools of thought, but the medical difference is important because



physicians need to know if some people's livers will simply not be diseased to the point of cirrhosis, and if not, why not?

It is clear that overall, disease severity increases over time. A recent study of persons 9-16 years post-infection showed no fibrosis in 63%.

The best indicator of disease progression is histologic. Those who have reached stage 3 fibrosis are most likely to progress to cirrhosis. Other factors which are predictors of disease severity are age at infection (the younger, the less likely to have progressed over the same period of time), alcohol use, mode of infection and ALT scores. An infected person with a persistently normal ALT has less fibrosis, less inflammation, less cirrhosis and progresses more slowly.

An emerging indicator of disease progression is genotypes. The overwhelming evidence is that genotypes 1a and 1b respond less well to anti-viral treatment and appear to have a more virulent course of the disease.

With decompensation, the survival rate is about 50% after 5 years (much higher than I thought), although there was some indication that was due to the fact that there are livers available for transplantation at this time. There was a lot of doom and gloom on the subject of overwhelming need for livers for transplantation when the current HCV infected populations progresses.

On this note, although not discussed at the conference, apparently there is a form of liver "dialysis" being developed. Natalie Rock said that liver dialysis machines were displayed at the Chicago ASLD conference last November. I spoke with the nurse of one of the Edmonton gastroenterologists who is going to Spain to study the technique. At the present time, it appears that this process will keep people alive for a few months while waiting transplantation, but not indefinitely.

These issues are all relevant to disease modelling and we should review the draft CASL report on these issues.

### Genotyping

Genotype 1 is more prevalent in North American than 2 or 3 by a fair margin. Typical estimates show 90% of Canadians infected with type 1. However, the virologist

(microbiologist) from Nova Scotia, where genotyping is regularly done, indicated there statistics show about 62% type 1 and the remainder 2 or 3 or undetermined. It appears that Nova Scotia may be the only place where genotyping is regularly done and it is not clear whether the difference in statistics on the proportion of the infected population which has genotype 1 relates to the Nova Scotia infected population or the lack of data across the country. One physician (I think it was Martin Tepper) from Ottawa indicated the percentage of genotype 1's in their population was around 92%.

It was a clear consensus that genotyping is beneficial in making treatment decisions. The literature indicates that type 1's need 48 weeks of treatment while types 2 and 3 need only 24 weeks. This has a significant impact on both the financial and physical (in terms of side effects) costs of treatment.

Chris Sherlock told me that to date, genotyping is not widely available and has only been in done in B.C. as part of studies. He said that a working group in B.C. is getting the go ahead and funding from the B.C. government to develop guidelines for treatment which he thinks will be better, more complete and more scientifically based than the CASL guidelines which will come out of this conference. He believes this will happen in the next few months. One of the recommendations will be that everyone is genotyped before they are treated because the cost of genotyping is much less than the costs of six months of treatment which may be avoided if the patient is type 2 or 3. This will impact on our the Fund because both pain and suffering and costs of treatment will be paid for by the month (or as incurred). Therefore, if genotyping becomes more prevalent, it will become an important factor in modelling in the future. We should keep our eyes on this.

### PCR Testing

PCR testing for HCV is both quantitative and qualitative and there are a few different tests for both. The consensus of the panel was that PCR testing was not necessary for the initial evaluation of a patient. They will use an EIA confirmed by a second EIA or a RIBA on which to make a diagnosis of HCV.

Medically, a PCR has two roles. First, it can be used for initial evaluation and diagnostic purposes to confirm that a patient has HCV. Second, it is used for treatment decision purposes.

The advantage of a PCR test is that it determines whether a particular patient is "viremic", ie: currently infected with the virus, as opposed to someone who has cleared the virus. In

terms of using PCR testing to confirm ongoing infection with HCV. I gathered that the reluctance to rely on it to the exclusion of other factors was due to the nature of the test and the difficulty with ensuring that a sample is handled properly and the results are accurate. Although this area is highly technical, I understand that a "positive PCR" is one in which the measurable amount of the RNA of the virus passes a certain threshold. It is possible to have different results on the same patient in a very short period of time depending on the test used and how the sample was handled. One panelist commented that if he has an antibody positive patient with raised ALT's, he will not bother to do a PCR because the raised ALT is enough evidence for him to go on to do a biopsy to see what is going on with the liver and he does not want a "false negative" PCR to give comfort. He will use a biopsy as the determinant of whether he treats or not.

I later spoke with Chris Sherlock about this topic. It became clear that the physicians in the laboratory (ie: virologists like Sherlock and microbiologists like Mel Kradjyck at the B.C. Centre for Disease Control at Vancouver Hospital) are frustrated with the treating physicians lack of understanding of the tests and how they work. Sherlock confirmed that there can be "false negatives", although he did not think that the example of someone who is antibody positive with raised ALT to be a good example because an ALT can be raised for many reasons. He said the issue is whether a patient is viremic or not. He said that a retest will likely shed some light on a possible false negative. I think this squares with what Frank Anderson told you. The question is how one determines when a negative PCR test is a "false negative". In the treating setting, where there is signs of liver disease in the patient and a quantitative PCR came back negative, one can see that the physician will go back for another test or do a biopsy to check the status of the liver. But where the test is done for compensation purposes on an asymptomatic patient, there would be no reason to check a false negative or do a biopsy and we could deprive some class members of the second level of compensation unfairly. However, I understand that Anderson routinely does a second PCR test where the 1<sup>st</sup> is negative.

In addition, this seems to be one of the areas where the divergence of opinion also has to do with funding and availability of the test across the country. Natalie Rock (Anderson's HCV nurse) confirmed that they do a PCR on all of their patients. In B.C., PCR testing is paid for by Schering Canada, the manufacturer of the test. Sherlock says the cost is not great, and if it is ordered in high quantities it diminishes. One of the qualitative tests is the same one used for HIV, so they get it for reasonable rates at St. Paul's. The quantitative test is cheaper than the qualitative and runs about \$60-\$100. It appears to be less frequently used across the country although Jenny Heathcote indicated she thought it was an essential part of treatment to do a qualitative PCR at the beginning for a baseline and then PCR's at various times through treatment and after treatment.

We must consider the cost issues. If it is not paid for across the country and a physician does not order it for diagnosis purposes or cannot have it paid for, then it will come out of the fund under the treatment and medical costs or the out of pocket expenses pertaining to getting medical opinions to qualify for compensation.

In summary, there is some reluctance to rely on quantitative PCR's as a diagnostic tool (as our plan does) but a good deal of reliance on it for treatment purposes. There is also problems with the cost of it.

We may need to consider alternative diagnostic criteria at level 2, such as raised ALT for a period of time and/or a biopsy. I realize we do not want a biopsies to pervade this program, but surely it can serve as an alternative and if there is a class member who has a negative PCR but stage one fibrosis on biopsy, they should get level 2 compensation. I suggest we get together with Sherlock and/or Anderson to discuss this issue fully.

### Treatment

A comprehensive presentation was given on treatment of HCV by Linda Scully. As well as interferon ("IFN") alone, combination IFN and ribavirin therapy, consensus IFN (genetically engineered), lymphoblastoid IFN, recombinant IFN with varying treatment schedules, pegulated IFN, induction dosing (6 million units daily), reinforced dosing (induction + longer duration), and downward titration were all discussed.

The conclusion, overwhelmingly, was that the current treatment of choice was combination IFN and ribavirin therapy and that would become the "gold standard" of treatment. Recommended treatment length is from 24 weeks to 48 weeks, with genotyping (discussed above) and non-response the biggest determinants of treatment duration. Dr. Feinman opined that within 5 years pegulated interferon (which Anderson has discussed with us - it is IFN suspended in fat which can be given in doses which is absorbed evenly over time) will become the standard. It was not clear to me whether this would be IFN alone or in combination with ribavirin.

Trials of IFN with other agents continue in hopes of improving the response rate. None of the mentioned methods have shown greater success than combination therapy except induction dosing, which had a sustained response rate of 46%. The overall sustained response rate of combination IFN and ribavirin is 35-40%, but the response rate is considerably lower in genotype 1 patients (about 28%).

In addition, it was noted that with combination IFN and ribavirin therapy, they may not be able to ascertain the likelihood of response early in therapy as they did with IFN. The consensus was that a positive PCR at 3 months of therapy is not a strong indicator of no response which will prompt discontinuance of therapy.

The indications for treatment are an ALT of 1 ½ times normal on one test or more, plus a biopsy. They did not identify a threshold of biopsy necessary to prompt treatment, although they agreed they would not treat a stage 0, grade 0 biopsy. There is a play of factors which influence the decision to treat. For example, a lively debate occurred pertaining to treating a stage 1, level 1 biopsy at age 22 versus a stage 1, level 1 biopsy at age 65. Almost everyone would treat the 22 year old, but many would not treat the 65 year old, not because he or she is less deserving of treatment but because he or she may be more likely to die of something else before dying of HCV. Jenny Heathcote indicated she would be hesitant to treat the 22 year old because of the severe side effects of treating and the likelihood (expressed more in terms of the hope) that a side effect free treatment will come along within 5 years. The costs of treatment, both financially and in terms of side effects are large considerations.

Favourable treatment response is most likely when the following factors are present: infection below age 40, genotype 2 or 3, female, low viral load, and fibrosis 1 or 2 (not higher).

The contraindications to treatment are:

- age (under age 18)
- psychiatric disorder (there was debate over what this meant)
- autoimmune disease
- retinal disease with diabetes
- anemia
- cardiovascular problems with which congestive heart failure, arrhythmias or uncontrolled hypertension is present
- non-compliance with contraceptive advice
- seizure disorders

There was some debate over this list and it may change in final recommendations.

I was most surprised by the discussion pertaining to treatment of children. Based on the presentation and the remarks of pediatricians, I had the impression that treatment of children is common (which does not entirely square with what Anderson told us). Several studies were reviewed of treatment in children (mostly Japanese), which indicated that it is beneficial. Jenny Heathcote asked about the studies on growth in children who had been

treated because she had been told she could not give IFN to a child because it stunted growth. The pediatrician indicated that the studies reviewed growth and only showed weight loss, not a loss in growth rate in children. There appeared to be a divergence among the hepatologists and the pediatricians on this issue, as the pediatricians were treating but the hepatologists do not. A B.C. pediatrician, Richard Schreiber, from Children's, was at the conference and we may want to get him and Anderson together on this issue. Although this issue is not important to the workability of the compensation plan, it is important for costing as well as the criticism of the plan that it is "not good for children". If children are being treated more often, treatment coverage is of a major benefit to children and their families.

Based on the discussion pertaining to treatment, it is clear that the decision to treat/not treat is not quite as clear as our framework agreement visualized (would recommend IFN but/for a contraindication, or meets the "protocol" for IFN) when using this as a diagnostic alternative to stage 2 fibrosis for Level 3 compensation. I do not believe there is a "protocol" as such and the "recommendation" to treat in large part takes into account the patient's personal circumstances. I think some work needs to be done on this factor as a diagnostic alternative. We may be able to accomplish this by deleting the "recommendation for treatment" alternative and creating a protocol in conjunction with some physicians.

### Biopsy

The mortality rate for biopsy is one in ten thousand. The same rate applies to transjugular biopsy of hemophiliacs. Hemophiliacs can be safely biopsied if they are covered with product and biopsied through the jugular. One physician described this a "fiendishly clever" because if a bleed occurs, it occurs into a vein. One person advised that the Manitoba Hemophiliac Society officially takes the position that hemophiliacs should not be biopsied and suggested the conference take that into account. Mike McCarthy, who is on the board of the national CHS, said they do not take that position or any position on biopsy and left it to society members to discuss with their physicians. The conference attendees indicated that they would not take into account the position of a society on a treatment issue but would make their recommendations based on medicine and discussion with the patient.

There was no indication that there is a contraindication to biopsying children.

The conference would not recommend that pathologists read slides a certain way but would recommend that pathologists get together and standardize their reporting methods which they hoped would be numeric graded stages. One physician commented that you can standardize the format, but not the pathologists.

## Children

I have discussed biopsy and treatment of children above.

There are very few long term virologic follow up studies involving children and therefore a lack of information about the natural history of the disease in children. The results of the studies which do exist vary widely. One study of children infected perinatally showed that there was a 25.8% spontaneous clearance rate. In another study, of 458 children who were transfused at age one or less, 67 were antibody positive but of those, 60% were RNA negative on follow up. They believe this is due to infants having "super immune" systems. In another, only 6.2% of transfused children (any age at transfusion) cleared the virus within 3 years. A study which followed up an average of 6.8 years showed a significant number of children had fibrosis, but inflammation was mild. In a Spanish study, children and adults with the same disease duration were assessed and the children had significantly milder levels of fibrosis and grades of inflammation.

Part of the reluctance to treat children is due to the lack of data on the natural history of the disease.

## TTV

This is the virus known as the "transfusion transmitted virus", although the name is not accurate because they know it can be transmitted other than through transfusion. A Mayo Clinic study found that of their general population of HCV patients, 15% were co-infected with TTV. Of the cohort of HCV patients which had progressed to decompensation, 45% are co-infected with TTV. This was remarkable to me as it indicates that co-infection may be a major influence on progression of the disease. Surprisingly, the conference attendees were not really phased. They did not recommend screening the blood supply for TTV. TTV is sensitive to IFN as about 52% cleared TTV after treatment.

23



**CAMP CHURCH & ASSOCIATES**  
BARRISTERS

J.J. Camp, Q.C.\*  
David P. Church\*  
Joe Fiorante\*  
Andrew J. Pearson  
Sharon D. Matthews  
Ian G. Schildt

This is Exhibit \* X \* referred to in the  
affidavit of JJCAMP  
made before me on MAY 23 19 98  
A Commissioner for taking Affidavits  
For British Columbia

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555 West Georgia Street  
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FILE REF: 96015/001

April 16, 1998

**"WITHOUT PREJUDICE"**

VIA FAX NO. (613) 952-8713

Ivan G. Whitehall  
Chief General Counsel  
Department of Justice  
Room 2341, 284 Wellington Street  
Ottawa, Ontario  
K1A 0H8

Dear Sir:

Re: Endean et al. v. The Canadian Red Cross et al.  
S.C.B.C. Action No. C965349, Vancouver Registry

I refer to our meeting and subsequent telephone conversations. I confirm that the cross Canada network of lawyers acting for Hepatitis C claimants from 1986 to 1990 met in Toronto on April 7, 1998. The meeting was constructive.

I confirm that we have agreed on a Negotiating Committee of five lawyers to represent the Canadian HCV claimants during this period. Two of the lawyers, Pierre Lavigne and Bernard Paiement, are from Quebec where, as you know, a class action has been certified. Two of the lawyers will represent the proposed Ontario class which we anticipate will be certified shortly and will cover not only Ontario but the rest of Canada exclusive of Quebec and British Columbia. I will represent the British Columbia class.

As promised, I enclose a draft agenda for the consideration of the defendants. I confirm that our negotiating committee will attend the first meeting set for the Justice Conference Centre in Ottawa at 9:00 a.m. on April 23, 1998. I can assure you from our side that we are cognizant of the need to give our highest priority to these negotiations. I suggest that the first negotiating session deal with at least the following matters

- (a) identify issues and matters to be negotiated;
- (b) a time schedule for negotiations;

S0545 1

\* Denotes Law Corporation

## CAMP CHURCH & ASSOCIATES

- (c) the means for negotiations including telephone conferencing, video conferencing and face-to-face meetings;
- (d) future locations for face-to-face negotiations;
- (e) the nature of the negotiations, ie. private v. public;
- (f) how to deal with the media pertaining to negotiations; and
- (g) funding of expenses including:
  - (i) expenses pertaining to the negotiations;
  - (ii) expenses pertaining to identifying class members;
  - (iii) expenses pertaining to notification of class members;
  - (iv) expenses pertaining to determining the clinical course of HCV;
  - (v) expenses pertaining to public relations; and
  - (vi) expenses pertaining to translation.

Attached is a draft of our suggested matters for negotiation.

As I mentioned to you, our immediate concern is identifying all Canadian class members and ensuring that they are informed of their rights.

I look forward to our next meeting and will advise on the proposed meeting date as quickly as possible.

Yours truly,

CAMP CHURCH & ASSOCIATES

By:

JJ. Camp

JJC:hp  
Enc.

## **DRAFT AGENDA HEPATITIS C NEGOTIATIONS**

1. identify issues and matters to be negotiated;
2. a time schedule for negotiations;
3. the means for negotiations including telephone conferencing, video conferencing and face-to-face meetings;
4. future locations for face-to-face negotiations;
5. the nature of the negotiations, ie. private v. public;
6. how to deal with the media pertaining to negotiations;
7. funding of expenses including:
  - (i) expenses pertaining to the negotiations;
  - (ii) expenses pertaining to identifying class members;
  - (iii) expenses pertaining to notification of class members;
  - (iv) expenses pertaining to determining the clinical course of HCV;
  - (v) expenses pertaining to public relations; and
  - (vi) expenses pertaining to translation;
8. class definition;
9. class membership;
10. class size;
11. notification program;
12. amount of compensation;
13. deferral program;
14. methodology of assessing claims;
15. exigent claims.

24

APR. 27. 1998

5:00PM

JUSTICE (613)952-8713

NO. 662

P. 2/6



Department of Justice  
Canada

Min. de la Justice  
Canada

Room 2341, East Memorial Bldg.  
284 Wellington Street  
Ottawa, Canada  
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Telephone: 613-957-4801  
Facsimile: 613-952-8713

Y  
JJ Camp  
made before me on APR 23 1998  
A Commissioner for taking Affidavits  
For British Columbia

April 27, 1998

BY FACSIMILE

Mr. J.J. Camp, Q.C.  
Camp Church & Associates  
Barristers and Solicitors  
4th Floor  
Randall Building  
555 West Georgia Street  
Vancouver, BC V6B 1Z5

Mr. Michel Savonitto  
Marchand, Magnan, Melançon, Forget  
Ste. 1640, 600 rue de la Gauchetière  
Montreal, Quebec  
H3B 4L8

Mr. Paul Lamek  
Genest Murray DesBrisay Lamek  
130 Adelaide Street West  
Suite 700  
Toronto, Ontario  
M5H 4C1

Ms. Bonnie Tough  
Blake, Cassels & Graydon  
P.O. Box 25, Commerce Court West  
Toronto, Ontario  
M5L 1A9

Dear Ms. Tough and Messrs. Camp, Savonitto and Lamek:

Re: Hepatitis C Negotiations  
Our File No: 294163-21

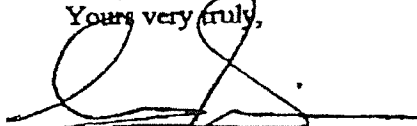
Thank you very much for what I consider to be a very useful meeting on April 23rd. During the meeting the plaintiffs' groups requested that the Government of Canada release the epidemiology study ("Transfusion Related Hepatitis C in Canada: 1986 to mid-1990: Occurrence and Natural History") prepared by LCDC. As with other government studies and as part of our discussion it was agreed that when the Government of Canada releases this study it does so without waiving its privilege, if any, relating to it.

I wish to confirm that I handed you a copy of the LCDC study at the close of the meeting. I have done so because I felt there was a fair degree of expectation that the Government act in this matter expeditiously. I would confirm that you have agreed that the authors of the study will not be contacted by the plaintiffs without first discussing this with the defendants.

- 2 -

I also enclose our Points of Record from the April 23rd meeting. So as to avoid multi-lateral negotiations, may I assume that the Plaintiffs' Committee will communicate with me through Mr. Camp, as to concerns with any of the points or any additions?

Yours very truly,

A handwritten signature in dark ink, appearing to be 'I. G. Whitehall', written over a horizontal line.

I. G. Whitehall, Q.C.  
Chief General Counsel

## **POINTS OF RECORD - NEGOTIATING MEETING OF APRIL 23 - OTTAWA**

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### **Attendees:**

I.G. Whitehall, Chief General Counsel, Department of Justice;  
Catherine Moore, Counsel, Civil Litigation, Department of Justice;  
Cliff Prowse, Counsel, Ministry of the Attorney General, British Columbia;  
Darlene Acton, Counsel, Department of Justice, Alberta;  
Michele Smith, Counsel, Ministry of the Attorney General, Ontario;  
Christine Henderson, Counsel, Ministry of Health, Ontario;  
Michael Hudson, Counsel, Legal Services, Health Canada;  
Bonnie Tough, Counsel, Blake Cassels, Toronto;  
Clifford N. Sutts, Counsel, Gignac, Sutts, Windsor, Ontario;  
Dawna Ring, Counsel, Buchan, Derrick, Halifax, Nova Scotia;  
Douglas Elliott, Counsel, Elliott, Kim, Toronto, Ontario;  
Paul Lamek, Counsel, Genest, Murray, DesBrisay, Lamek, Toronto, Ontario;  
J.J. Camp, Counsel, Camp, Church, Vancouver, British Columbia;  
P.R. Lavigne, Counsel, Ottawa, Ontario;  
M. Savonito, Counsel, Marchand, Magnan, Montreal, Québec;  
Claude Lapointe, Counsel, Lapointe, Cayen, Morel, Gatineau, Québec;  
Robert Monette, Attorney General of Québec;  
A. Lespérance, Counsel, Québec Regional Office, Montreal, Québec

### **Notes:**

1. No formal minutes will be prepared; however, decisions and other matters that the group wishes to have recorded will be recorded.
2. Negotiations involve no admission of liability.
3. The Plaintiffs noted the potential conflict with the hemophiliacs. The conflict will be considered further when and if it actually arises.
4. Although J.J. Camp has been chosen as the spokesperson for the Plaintiffs' counsel, he has no authority to bind Plaintiffs' counsel and any decision will be subject to the ultimate agreement of all.
5. With respect to "orphan" cases, Plaintiffs' counsel are prepared to view the problem as "their" problem.

6. Subject to the requirements to keep clients informed and take instructions, negotiations are to be conducted in confidence and on a without prejudice basis.
7. Certification is of prime importance to Plaintiffs' counsel in Ontario. While recognizing the difficulty on the part of Defendants' counsel, if there is no agreement re: (a) consent and (b) assurance, Ontario Plaintiffs will simply proceed to obtain a certification order.
8. IGW undertakes to obtain further information about the arrangements made for individuals secondarily infected with HIV; particularly with respect to whether the amount is to come from the \$1.1 billion or out of the existing EAP program.
9. Plaintiffs' counsel acknowledge Defendants' position re: excess funds.
10. The issue of holding litigation in abeyance for the duration of the negotiations was discussed but remains unresolved.
11. The issue of whether the Red Cross should be at the table will be left until Defendants come to a resolution with the Red Cross.
12. The LCDC epidemiological study will be (and, in fact, was) produced to the Plaintiffs. It is agreed that there has been no waiver of any privilege that attaches to the study. Plaintiffs' counsel agree in principle that to the extent similar studies are shared, there is no waiver of any privilege. Other studies that are to be treated on this basis will be financed out of the \$1.1. billion.
13. Plaintiffs' counsel will identify exigent claims in terms of number and nature of difficulty.
14. Plaintiffs' counsel will identify their preferred modality for the next meeting; i.e., global "grid" approach or individual assessment.
15. The next meeting will be in Vancouver on Wednesday, May 6. The Department of Justice will make the arrangements for meeting facilities and translation. Justice will not write to anyone who has not attended this meeting.
16. It was agreed that the negotiations will be conducted in a media silence. Clients will also be encouraged to respect this principle. The following four points are to be suggested as media lines:
  - (i) It is not appropriate to comment at this time;
  - (ii) We are trying to proceed diligently;
  - (iii) All of the issues of the table are within the announcement of the Ministers;
  - (iv) However, it does take time to do it right.
17. With respect to communications, Defendants' counsel will write to counsel for the three class actions and Bonnie Tough.
18. Plaintiffs' counsel agree to share their respective questionnaires with each other and with Defendants' counsel. Defendants' counsel will review same with a view to establishing a common form.



APR. 27. 1998 5:01PM JUSTICE 613/952-8713

NO. 662 P. 6/6

19. Plaintiffs' counsel will provide a travel budget in short order. Defendants' counsel will provide government travel guidelines to Plaintiffs' counsel as soon as possible.

25

**CAMP CHURCH & ASSOCIATES**  
**BARRISTERS**

J.J. Camp, Q.C.\*  
David P. Church\*  
Joe Fiorante\*  
Andrew J. Pearson  
Sharon D. Matthews  
Ian G. Schildt

This is Exhibit "Z" referred to in the  
affidavit of... J.J. Camp  
made before me on May 23, 1998  
A Commissioner for taking Affidavits  
For British Columbia

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FILE REF: 96015/1001

April 28, 1998

Genest Murray DesBrisay Lamek  
#700 - 130 Adelaide West  
Toronto, Ontario  
M5H 4C1  
Attention: Paul Lamek, Q.C.

Elliott & Kim  
#304 - 150 York Street  
Toronto, Ontario  
M5H 3S5  
Attention: Douglas Elliott

Buchan Derrick & Ring  
#100 - 5525 Artillery Place  
Halifax, Nova Scotia  
B3J 1J2  
Attention: Dawna Ring

Pierre Lavigne  
Avocat  
440 Laurier Avenue, W., Suite #200  
Ottawa, Ontario  
K1R 7X6

Marchand, Magnan, Melançon, Forget  
Tour de la Banque Nationale  
600, de la Gauchetière Ouest  
Bureau 1640  
Montreal, Quebec H3B 4L8

Gignac, Sutts  
600 Westcourt Place, 251 Goyeau Street  
P.O. Box 670  
Windsor, Ontario  
N9A 6V4

Attention: Michel Savonitto

Attention: Harvey T. Strosberg, Q.C.  
Cliff Sutts

Dear Sirs/Mesdames:

Re: Endean et al. v. The Canadian Red Cross et al.  
S.C.B.C. Action No. C965349, Vancouver Registry

Enclosed is a copy of Ivan Whitehall's letter dated April 27, 1998 along with a copy of my notes from our first negotiating session dated April 27, 1998.

Although I might quibble with the language of some of the points recorded by Ivan Whitehall, I did not see the need to respond with any substantial corrections.

There are a few matters which require our immediate attention. These include:

## CAMP CHURCH & ASSOCIATES

- (a) Whether we are prepared to suspend litigation demands for discovery of documents, examinations for discovery, etc., while we are conducting negotiations. I assume this request did not pertain to the need for Ontario to get a Certification Order. In my opinion, we should not suspend our litigation demands. Perhaps we should tone down the rhetoric, but in my experience, the best way to resolve matters and obtain a favourable settlement is to "keep everybody's toes to the fire". An argument can also be made that if we do arrive at a settlement, we will need to advise the court on the subject of liability unless the defendants are prepared to admit liability. Furthermore, in this jurisdiction, our judge is expecting reports from counsel on the progress of the litigation. Our next pre-trial conference is set for the end of June, 1998.
- (b) We promised to respond to the other side on our preferred modality for approaching the identification of HCV-infected class members and the assessment of damages for the class. At our subsequent meeting on February 27, 1998, I believed we arrived at a consensus that we did not have the luxury of using a British Columbia notification program across Canada and that we would be bound to use a statistical or epidemiological approach to identifying class size. There was a further consensus, however, that class size identification should be supplemented by an effective advertising campaign, including a briefing of the medical community to ensure that the maximum number of HCV class members was identified. Other ideas, such as government inserts into government mailings, might also be utilized.
- (c) With respect to the issue of assessment of damages, we did not really address this issue at our post-negotiation meeting. From private conversations I have had with members of our network of lawyers, it appears that an individual assessment of damages is our preference. By this I do not mean to say that there will not be groupings, for example, asymptomatic claimants, but that there are a substantial number of claimants whose characteristics are sufficiently idiosyncratic that an individual assessment of damages will be necessary.
- (d) On the subject of exigent claims, the other side has asked us to identify the number of exigent claimants and how we would propose to handle these claims. The number is virtually impossible to assess in absolute terms until we know the entire cohort of class claimants. In any event, we are able to identify some of these exigent claimants at this time who are either in desperate health condition or desperate financial condition. It strikes me that we ought to be able to get a relatively modest amount of funds in their hands quickly, subject to the following conditions:
- (i) they do fall within our class;
  - (ii) they are not "disentitled", to use Ivan Whitehall's phrase, from compensation, eg. I.V. drug users;
  - (iii) that we produce independent evidence of either serious health condition or financial distress.

## CAMP CHURCH & ASSOCIATES

It may be that a figure as little as \$20,000 per claimant will serve to ameliorate their plight. In British Columbia, we have only identified a few claimants which would fall into the exigent category. I suspect that the paucity of these claimants will give some comfort to the other side.

- (e) We promise to provide a budget to Ivan Whitehall pertaining to hotel, travel and other negotiating expenses. As at the date of writing this letter, I have not yet received the promised guidelines. I am following up.

I propose a telephone conference call within the next two or three days to deliberate these matters.

Yours truly,

CAMP CHURCH & ASSOCIATES

By:

J. J. Camp

JJC:hp

26

f

## M E M O R A N D U M

FROM: SHARON MATTHEWS

DATE: May 1, 1998

TO: INTEREST GROUP LIAISON SUB-COMMITTEE

INFO: JJC

This is Exhibit "AA" referred to in the  
affidavit of JJCAMP  
made before me on May 23, 1999

CLIENT: HEPATITIS C

RE: CLASS ACTION

[Signature]  
A Commissioner for taking Affidavits  
For British Columbia

---

This memo records the issues address and decisions taken at our conference call today, in which Doug Elliott, Phil Tinkler, Clint Docken (one half hour into the conference) and I participated.

### Interferon Treatment

We decided that we recommend that a demand for a lump sum payment for interferon treatment not be made at this time. Instead, in part based on Clay Serby's press conference today, we recommend that the Negotiating Committee, at the May 6, 1998 meeting, seek agreement from the provincial governments to immediately begin covering the costs of inteferon therapy for our clients if it is prescribed by a qualified physician. This coverage should not be part of the \$1.1 billion package. This recommendation will be conveyed to the Negotiating Committee by Sharon Matthews.

### Exigent Claims

The following concerns of the Class Size, Disease Modelling and Damages Sub-Committee were conveyed through Doug Elliott:

- (i) it may be dangerous to involve HeCSC because it may create an expectation on the part of HeCSC that they will be involved in the negotiations and have a seat at the table;
- (ii) para. 6(d) should be changed from 12 months to 24 months;
- (iii) the compensation should be lump sum in order to not interfere with the work on damages being done and so that persons do not perceive differences among the way in which exigent claims are treated.

With respect to (i), Doug Elliott's meeting with HeCSC on this topic has been postponed until next Friday, by which time we will have already firmed up our basic position on this issue. No decision was taken with respect to consulting HeCSC on issues such as this generally.

With respect to (ii), it was agreed to change 12 months to 24 months, and in addition, to delete the words "whether or not related to hepatitis C" in order that we not "red flag" the unrelated illnesses issue at the outset.

With respect to (iii), it was agreed that that compensation for medically urgent cases should be in a lump sum which is the same for all persons, but compensation for financial urgency should be in a range to be decided upon.

With respect to the role of an adjudicator, it was agreed that we would explore using an adjudicator on the following basis:

- on disputes pertaining to medically urgent cases arising from the individual's proof of infection through transfusion or disputes pertaining to the person's medical condition qualifying for exigent aid;
- on all financial dispute cases, in determining qualification for financial aid and the amount within an agreed upon range.

With respect to the appropriate adjudicator, it was agreed that it would be preferable to have one body adjudicating all of the claims, but the possibility of having it done separately in each province was left open. Doug Elliott has a meeting with the Toronto Chambers ADR on Monday to discuss the costs of using their services or other options which they can suggest. Concerns were raised about using a private adjudication service which may be perceived by the public or by the defendants as having a bias. A discussion ensued about the feasibility of having federally appointed judges adjudicate these issues. It was agreed that we would not oppose a suggestion by the defendants that judges deal with this issue. It was decided to review the Toronto ADR proposals and suggestions before arriving at a opening position on this issue.

With respect to the amount for medically urgent claims, it was agreed that we would recommend to the Negotiating Committee that it open with \$25,000 per exigent claim, and that we advise the Negotiating Committee that any amount less than \$10,000 per claimant would not be acceptable and may backfire in terms of public relations and the message it would send to the defendants. It was also agreed that the medical urgency "lump sum" must be carefully conveyed to the defendants in a way which will avoid it being labelled as any particular head of damages or as a precedent for any amounts to be negotiated in the general negotiations, such as an "up front" payment.



It was agreed that we must seek the commitment of those provinces who have the right to subrogate medical plan payments in litigation that they will waive their subrogated interest so that there are no strings attached to these payments. In addition, it was agreed that we seek the agreement that no government taxes, levies, revocation of other social assistance payments, etc., will arise as a result of payments under this exigent assistance plan.

It was agreed that I would put together a list of factors to be considered in determining whether financial urgency exists in a particular case. To this end, I have the following suggestions:

- inability to work due to illness
- debt problems due to financial burdens due to illness (ie: missed work, travel to medical appointments expenses, drug costs)
  - foreclosure on home
  - bankruptcy
  - debt-related litigation
- loss or depression of sole proprietorship or small businesses due to illness

It was agreed we would meet by conference call on Monday, May 4, 1998 at shortly after 4pm EDT to finalize our recommendations to the Negotiating Committee.

### HeCSC Relations

Doug Elliott spoke with Jeremy Beaty and proposed he and Jeremy speak once weekly, and a conference call take place once montly between this Sub-Committee and the HeCSC Board and some local members.

The HeCSC AGM is May 30 and 31, 1998 in Toronto. Doug Elliott and Phil Tinkler will be attending. Sharon Matthews may attend.

Phil Tinkler has obtained a copy of the Bill enacting the Irish compensation plan but it is incomplete. He will circulate it when he has a complete copy. The Positive Action members also provided Jeremy Beaty with a box of documents. Jeremy wants to review it before it is provided to us but we are working on obtaining access to it.

27

**CAMP CHURCH & ASSOCIATES**  
BARRISTERS

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FILE REF: 96015/001

May 4, 1998

VIA FAX NO. (416) 593-6606

Kenneth Arenson  
179 John's Street  
Toronto, Ontario  
M5T 1X4

This is Exhibit "BB" referred to in the  
affidavit of JJCAMP  
made before me on MAY 23 19 98  
A Commissioner for taking Affidavits  
For British Columbia

Dear Sir:

**RE: HEPATITIS C CLASS ACTION -  
RED CROSS ASSETS**

I am writing to you as members of the "Search for Other Sources of Funds" working committee. I have learned that the likely transfer date for the assets of the Red Cross pertaining to all blood matters to the new blood agency will take place on or about September 1, 1998. We need to have in place prior to that date either an agreement with the parties that the transfer will not affect our rights of execution against these assets or an injunction restraining the transfer. Can I please impose upon you to develop a strategy to ensure that the interests of our HCV claimants are protected in this respect. I appreciate that there are only two persons on this committee at the moment and that you may need to enlist other resources to accomplish this task.

Please confirm that you have undertaken this work and please keep me posted.

Yours truly,

CAMP CHURCH & ASSOCIATES

By:

J.J. Camp

JJC:hp

cc: Bruce Lemer

51136.1

\* Denotes Law Corporation

28

# KENNETH ARENSON

LAWYERS

FAX [416] 593-6606. TEL [416] 593-4445. E-MAIL karenson@msn.com

179 John St., Suite 401, Toronto, Ontario, CANADA, M5T 1X4

This is Exhibit "CC" referred to in the  
affidavit of JTCamp

made before me on May 23 1999

A Commissioner for taking Affidavits  
For British Columbia

## TELEFAX LETTER CONFIDENTIALITY NOTE

The information contained in this facsimile message is legally privileged and confidential and is intended only for the use of the individual or entity named below. Any other use, dissemination, distribution, disclosure or copy of this facsimile is strictly prohibited.

May 4, 1998

SOURCE of FUNDS - REPORT no. 1

RE: Meeting with Bob Rae, May 4, 1998

I met with Bob Rae at his office in Toronto for one hour.

### Summary

1. We agreed that our conversation was without prejudice and confidential except that he could report on it to the CRCS, and I could report on it to the Strosberg/Camp counsel group. He asked me stress that any information he provides is to be kept among us.
2. I said my purpose in meeting with him was to enlarge the \$1.1 billion offer by securing the assets of the CRCS for the 1986 to 1990 class actions. I mentioned two ways that might be explored over the next little while: a Mary Carter or receivership.
3. He told me his goal was to preserve the non-blood operations in Canada of the CRCS while he negotiated with government for the CRCS exit from the blood system and turnover of the CRCS blood-collection assets. He also mentioned the CRCS employees. He said an appraisal of these assets is underway and he expected a report in the next two or three weeks. With that in hand he will be talking to all concerned, now including us.
4. He promised to stay in touch, and acknowledged that our clients have a strong claim to the CRCS assets in any turnover scenario with the new Canadian Blood Service and HemoQuebec.

### Other information

5. He wanted my comment on the CRCS proposal that it should be allowed to survive to carry on its non-blood activities. He had a concern about whether we would attack funds contributed by certain large regular contributors who gave to the CRCS for very specific non-blood initiatives. I said I believed that the Red Cross should survive for this purpose and this included an exemption for the necessary assets and contributions that came tagged to non-blood programs. He asked whether we would claim the assets of specific disaster campaigns, the Sagunay and Red River floods were given as examples. I said I doubted that we would want the blankets. The cash

that was raised on the promise that it was earmarked for those purposes would be exempt as a tagged contribution, if that had been adopted.

6. I told him we were looking for the blood assets and the investment portfolio. I said this included all these assets, down to the refrigerated trucks. The CRCS had to get out of the blood business. He agreed with both points. He asked, rhetorically, how the bureaucrats of the day could have let this charitable organization run the blood system.
7. He would not say what value he expected to be placed on the assets.
8. I asked about the size of the investment portfolio, which was \$50 million a while back. He said the CRCS is still talking to the Nova Scotia government and to Bayer, or others, about saving its \$33 million guarantee at the TD for "Fractco". I wonder how quickly they will lose motivation to work on this problem when our claim for the investment portfolio sinks in.
9. CRCS has two policies. Dominion of Canada has a policy up to end of January 1986. Commercial Union is on for part of 1986 to 1990. Commercial Union is disputing coverage. I think the dispute with Dominion of Canada is going on in Montreal, but he wouldn't say where the Commercial Union litigation is going on.
10. He mentioned Sam Schwisberg legal counsel at the CRCS head-office 613 739-2468, along with Bob Armstrong and Wendy Matheson who are on for the litigation. Rae is the right person to speak to, along with Schwisberg, about the CRCS assets.
11. The CRCS was invited to the May 5 to 6 negotiating meeting. Sam Schwisberg will be representing the CRCS. The CRCS was not invited to the first meeting.
12. CRCS is a \$500 million operation these days.
13. I mentioned a receivership. He said there was a legal and moral awareness on the part of the CRCS and they would not transfer assets without first discussing this with us. He talks to John Page at Cassels Brock about the transfer of assets to the new blood agencies.
14. He thinks Rock has blown the file. The CRCS believes that the pre 1986 and particularly the 1990 to 1992 claimants should have been included. I said the pre-86 folks were getting bad legal advice by the media. It wasn't the lack of a test from the early 80's and before, it's a question of when the standard of practice changed to use the test. I said aside from a few states in Germany, and the New York Blood Centre, no one was doing surrogate testing. He knew a fair amount about it. He argued that the standard had changed earlier than the Americans and mentioned that Italy was also surrogate testing pre-86. Is that right? I vaguely recall something like this although it might have been in 1985.
15. He said that the CRCS also believed that the post-1990 infected had good claims, although because the first generation anti-body test was at least 50% effective, there would be fewer of them in that time period. I think he is right here. The standard of practice in the US was to continue to use the surrogate tests after the first generation anti-body testing was introduced. The CRCS did not introduce surrogate testing in 1990.

16. On the Mary Carter, I said that my first thought was that our class action would get all the blood assets, or the moneys worth, plus the non-tagged investment portfolio, [and insurance proceeds, but that is a different story]. To the extent of those assets this would be a cap on the CRCS obligation for HCV tainted blood. I had in mind a Mary Carter scheme whereby our clients would get all the CRCS assets in the first instance and keep whatever share of the assets would not be needed to satisfy the claims of the others.

Good hunting tomorrow, JJ.

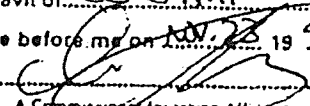
*Ken*

29



**CAMP CHURCH & ASSOCIATES**  
BARRISTERS

J.J. Camp, Q.C.\*  
David P. Church\*  
Joe Fiorante\*  
Andrew J. Pearson  
Sharon D. Matthews  
Ian G. Schildt

This is Exhibit "DD" referred to in the  
affidavit of JJ Camp  
made before me on May 28 19 99  
  
A Commissioner for taking Affidavits  
For British Columbia

4th Floor, Randall Building  
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Telephone: (604) 689-7555

Facsimile: (604) 689-7554

FILE REF: 96015/001

May 12, 1998

VIA FAX NO. 660-2636

Ministry of Attorney General  
Legal Services Branch  
1301 865 Hornby Street  
Vancouver BC  
V6Z 2H4

Attention: D. Clifton Prowse

Dear Sirs/Mesdames:

Re: Endean et al. v. The Canadian Red Cross et al.  
S.C.B.C. Action No. C965349, Vancouver Registry

With respect to Ken Arenson's letter of May 11, 1998, I do wish to make it plain that he was acting in accordance with the direction from the negotiating committee for the HCV claimants. Let me explain our position briefly. Both the Federal Government and the Provincial Governments have indicated that they will vigorously resist liability in the event trials of the HCV actions should ever come to pass. Without engaging in liability arguments, we hold the view that the Canadian Red Cross will be found liable along with the Federal Government and the Provincial Governments as defendants. In any event, it behooves us as counsel for HCV claimants across Canada to discharge our professional obligation to protect and advance our clients' interests, which, in our view, requires us to take measures to ensure that the assets of the Canadian Red Cross are not alienated or transferred until a settlement is reached and funded or until the court renders judgment on these cases and we have had an opportunity to execute on those judgments.

Let me expand on the sentiment reflect in Mr. Arenson's letter of May 11, 1998. We are not simply being bloody-minded (no pun intended) and trying to make a nuisance of ourselves. Rather, we will cooperate to ensure an orderly transfer of the CRC assets to the new Canadian blood agency or to Hemo-Quebec. We are ready, willing and able to enter into a form of agreement that secures our clients' interests in those assets and permits the orderly transfer of those assets.

CAMP CHURCH & ASSOCIATES

Please rest assured we are trying to solve problems and not create them.

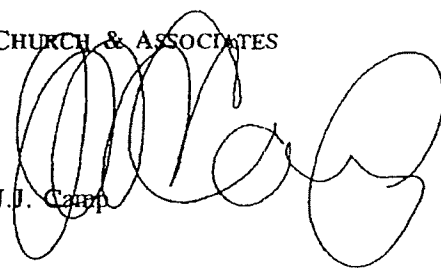
Unless exceptional circumstances dictate otherwise, the HCV negotiating committee intends to leave this matter in the capable hands of Ken Arenson for further negotiation and resolution.

Yours truly,

CAMP CHURCH & ASSOCIATES

By:

J.J. Camp



JJC:hp

cc: Ivan Whitehall, Q.C.  
Kenneth Arenson

30

concerned to Mr. Hoke

## CAMP CHURCH & ASSOCIATES

BARRISTERS

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Sharon D. Matthews  
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This is Exhibit "EE" referred to in the  
affidavit of JJCAMP  
made before me on MAY 23 19 98  
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FILE REF: 96015/001

May 4, 1998

VIA FAX NO. (613) 952-8713

Ivan G. Whitehall  
Chief General Counsel  
Department of Justice  
Room 2341, 284 Wellington Street  
Ottawa, Ontario  
K1A 0H8

Dear Sir:

### RE: HEPATITIS C NEGOTIATIONS

I thought it best to record in this letter that all of our negotiations are on a without prejudice basis and I will not identify "without prejudice" on each and every one of our communiques. You should feel free to do the same. If we resolve this matter, then we can revert to prejudicial communication.

I promised to write to you on the subject of methodology on class size and assessing the value of HCV claims.

### CLASS SIZE

Let me deal first with the methodology pertaining to class size. In British Columbia, we have had the benefit of a careful, in-depth notification campaign. I understand that Clif Prowse, to whom I am copying this letter, is making arrangements to permit us to access this information in detail. It is our intention to assess the class size very carefully in British Columbia with a view to extrapolating, as far as possible, across the rest of Canada. I am also informed that the BC notification campaign was more thorough than the Saskatchewan and Nova Scotia campaigns.

We appreciate receiving a copy of the LCDC study and I understand that you are making arrangements to permit us to have access to the reference material.

## CAMP CHURCH & ASSOCIATES

Our negotiating committee has concluded that we do not have the "luxury", if that is the proper term, to urge a cross Canada notification program similar to the BC notification program. First, we are informed that in some jurisdictions, the information relied upon in the BC notification program *simply does not exist*. Second, the BC notification program has lasted almost two years and this time period is simply too long if we were to implement it across Canada starting now.

Hence, we suggest a two pronged attack on the issue of identifying the cohort of HCV claimants in the material time, January 1, 1986 to July 31, 1990. First is a statistical approach using studies such as the LCDC study, the notification programs in BC, Saskatchewan and Nova Scotia, and the like. Second, and perhaps more importantly, we suggest an advertising campaign which would of necessity be Canada wide but would concentrate on those jurisdictions which have not had a notification campaign, to urge all persons who had transfusions during the material time to get tested and if they test positive for HCV, to register with a network of registries across Canada where they would be informed of their rights and become part of the cohort of persons in line for compensation. We envisage that this advertising campaign would be conducted in conjunction with a campaign with medical practitioners, hospitals and others, to inform them of the need to have all transfused persons in the material time tested. The campaign would have an end-date beyond which persons would not become entitled to compensation from the compensation package. This latter point assumes that there will be a pan-Canadian class action with opting out provisions which would have to be exercised in conjunction with the advertising campaign. Once the campaign was concluded and the end-date reached, we would know the size of the cohort in line for compensation.

### DAMAGES

With respect to the assessment of damages, we hold the opinion that it must be governed by an individual assessment. In saying this, we hasten to add that many of the HCV claimants are in the same boat and will be compensated similarly. For instance, those HCV claimants who are asymptomatic and roughly the same age, should be compensated similarly with respect to up-front payments with the added right to a further assessment in the event they became symptomatic, dependent upon the degree of symptomology. For example, on the issue of general damages, it may be possible to arrange a grid that is not too complicated and yet works reasonably smoothly. Quite frankly, however, we do not perceive that a grid can be used for such things as income loss, future care, etc.

In our opinion, it is necessary to devise a program to give each HCV claimant the comfort of knowing that his or her claim was being individually assessed. For example, fatigue suffered by one HCV claimant may affect his or her lifestyle, amenities of life, income, etc., very differently from another HCV claimant. We appreciate that this methodology will be more cumbersome than a pure grid approach but we are firmly of the view that the HCV claimants will demand no less than an individual approach to the assessment of damages. Needless to say, we will do whatever we can to streamline the approach to make it efficient and economical. It is imperative that we ensure that the least reasonable amount of money possible is spent on

CAMP CHURCH & ASSOCIATES

administering the scheme. It is not our intention in any way, shape or form to make the scheme bureaucratic and legally expensive.

I trust that this letter is sufficient for our negotiating purposes at this time.

Yours truly,

CAMP CHURCH & ASSOCIATES

By:

J.J. Camp

JJC:hp

cc: Clif Prowse

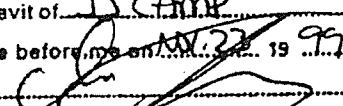
cc: HCV Negotiating Committee

31

# CAMP CHURCH & ASSOCIATES

## BARRISTERS

J.J. Camp, Q.C.\*  
David P. Church\*  
Joe Fiorante\*  
Andrew J. Pearson  
Sharon D. Matthews  
Ian G. Schildt

This is Exhibit "FF" referred to in the  
affidavit of J.J. Camp  
made before me on May 22 19 99  
  
A Commissioner for taking Affidavits  
For British Columbia

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FILE REF: 96015/001

May 1, 1998

VIA FAX

Buchan Derrick & Ring  
#100 - 5525 Artillery Place  
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B3J 1J2

Elliott & Kim  
#304 - 150 York Street  
Toronto, Ontario  
M5H 3S5

Attention: Dawna Ring

Attention: Douglas Elliott

Dear Sirs/Mesdames:

### RE: HEPATITIS C NEGOTIATIONS

As promised, enclosed is a copy of the list of lawyers across Canada who surfaced with HCV actions. I am confident that this list does not reflect all of the orphan cases. For example, Milner Fenerty wrote me on April 17, 1998 and copied Clint Docken, among others, including three law firms that were not disclosed on the attached list. I have some thoughts for you on how to handle these orphan cases and law firms. As you can see, I am copying Clint Docken with this letter.

We all agree that it would be best if all of the HCV claims and all of the lawyers for these claimants acted in concert. As you know, I have advised the other side that this is "our problem" and I would like us to solve it.

First, I think a personal approach is best. Certainly, it seems to have worked so far in Alberta. Clint Docken, so I understand, has conferred by telephone with each of the orphan lawyers in Alberta and has obtained their agreement to have Clint act as a spokesperson for all of the Alberta HCV claims known to date. To assist Clint in this endeavour, I advised that I would be more than happy to participate in a conference call with this Alberta group of lawyers. I understand that Donna Ring will also participate.

It seems to me that Bill Selnes should attempt to accomplish the same thing in Saskatchewan.

51081 1

\* Denotes Law Corporation



## CAMP CHURCH & ASSOCIATES

I understand that Doug Elliot has been conferring with Mr. Botan, Manitoba counsel, with a view to drawing them into our network. If that works out, then it would seem to make sense for that lawyer to handle the Manitoba orphan cases. I note, however, that no Manitoba lawyers show up on the attached list of lawyers.

I understand that Doug Elliot will handle the host of Ontario lawyers. As you can see, these lawyers form the vast majority of the orphans.

Presumably, Pierre Lavigne can be tasked with the Quebec scene. Again, I note that no Quebec lawyers show up on the attached list.

I understand that Dawna Ring is handling the Maritimes which, rightly or wrongly, I am treating as a single jurisdiction.

I suggest that the following points be stressed:

- (a) the class action is the only viable way for individual HCV claimants to proceed both with respect to litigation and settlement;
- (b) the corollary is that individual actions are prohibitively expensive and will likely be vigorously resisted by the governments and the Red Cross. There is a history of this to date. We have incurred more than \$100,000 in disbursements in our action in British Columbia to date and we have not begun to fight liability;
- (c) the rights of the HCV claimants are merged in class actions subject only to opting out. We view our role as effecting a settlement, if possible, that will be sufficiently attractive to all HCV claimants so that few, if any, will opt out;
- (d) all HCV claimants are entitled as of right to independent counsel. Some of these HCV claimants may need independent counsel to advise them on opting out or on an assessment of damages depending on the assessment methodology falling out of our settlement, if any;
- (e) the network of lawyers, including our negotiating committee and sub-committees, are comprised of highly competent, specialized lawyers (the draft of Dawna Ring's letter is particularly instructive in this respect and I would suggest it be circulated to those lawyers responsible for handling orphan cases).

I view this as having a very high priority since orphan cases and lawyers can quickly turn into rogue cases and lawyers which could do immeasurable damage to our chances to successfully negotiate a resolution of this case and to our liability case generally.

CAMP CHURCH & ASSOCIATES

Could I please impose upon you to keep me informed.

Yours truly,

CAMP CHURCH & ASSOCIATES

By:

J.J. Camp



JJC:hp

cc: Clint Docken

APR. 9.1998 3:58PM JUSTICE (613)952-8713

NO.468 P.2



Department of Justice  
Canada

Min. de la Justice  
Canada

Room 2341, East Memorial Bldg.  
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Telephone: 613-957-4801  
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April 9, 1998

BY FACSIMILE

WITHOUT PREJUDICE

Mr. J.J. Camp, Q.C.  
Camp, Church and Associates  
Barristers  
4th Floor, Randall Building  
555 West Georgia Street  
Vancouver, B.C.  
V6B 1Z5

Dear Mr. Camp:

Re: Hepatitis C Negotiations  
Our File No: 294163-21

I understand that you are counsel of record in the British Columbia class action brought on behalf of Plaintiffs infected with Hepatitis C through the blood system in the period from August 1, 1986 to July 1, 1990.

As you are aware the federal and provincial governments of Canada have announced that they wish to enter into negotiations with persons who have contracted Hepatitis "C" through blood or blood products received between January 1, 1986 and July 1, 1990. While the announcement refers to a \$1.1 billion envelope to deal with all claims including HCV and HIV claims, details of individual claims will have to be negotiated. Clearly, they need to be worked out through negotiations in both the class actions and claims brought by individuals. I have been appointed as the negotiator for the federal Crown. I propose that we meet along with my provincial counterparts so that we may discuss the most expeditious manner to conduct these negotiations.

I think it would help the negotiating process if the Plaintiffs and their counsel came to the table through a negotiating committee, but of course, I leave this to you and your colleagues.

I will be writing a similar letter to Mr. Harvey Strosberg, Q.C. and to Mr. Michel Savonitto, who act in the Ontario and Quebec class actions respectively. It would be of assistance

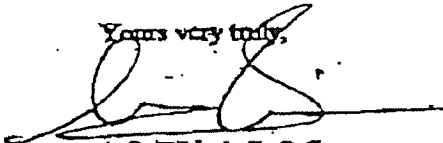
- 2 -

if you would let me know whether you will be acting on behalf of plaintiffs who have already commenced individual actions, or if these individual actions are to be dealt with separately. For your convenience, I attach a list of non-class suits commenced across Canada together with the name of counsel or the unrepresented Plaintiffs. Of course, this list represents the names we are aware of, should you know of actions not included in this list please advise us.

Should you wish to call me, my telephone number is (613) 952-0279.

I look forward to your early response.

Yours very truly,



I. G. Whitcomb, Q.C.  
Chief General Counsel

Encl

cc. Mr. Harvey Strosberg, Q.C.  
Gignac Sottis  
Barristers and Solicitors  
600 Westcourt Place  
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Mr. Michel Savonitto  
Marchand, Magnan, Melancon, Forget  
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us + Lerner  
+ Klein

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Kevin A. MacDonald  
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Ms. Bonnie Tough  
Blake, Cassels, Graydon  
Barristers and Solicitors  
Commerce Court West  
P.O. Box 25  
Commerce Court  
Toronto, ON M5L 1A9

Fax: 416-863-2653

32

MAY. 12. 1998 1:58PM JUSTICE (613) 952-8713

NO. 902 P. 2

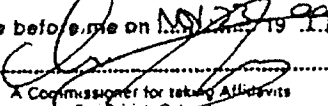


Department of Justice  
Canada

Min. of Justice  
Canada

Room 2341, East Memorial Bldg.  
284 Wellington Street  
Ottawa, Canada  
K1A 0H8

Telephone: 613-957-4801  
Facsimile: 613-952-8713

This is Exhibit "GG" referred to in the  
affidavit of MR. J.J. CAMP  
made before me on MAY 23 1998  
  
A Commissioner for taking Affidavits  
For British Columbia

May 12, 1998

Mr. J.J. Camp, Q.C.  
Camp Church & Associates  
Barristers and Solicitors  
4th Floor  
Randall Building  
555 West Georgia Street  
Vancouver, BC V6B 1Z5

Dear Mr. Camp:

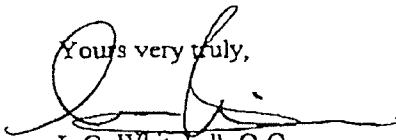
Re: Hepatitis C Negotiations  
Our File No: 294163-21

Thank you for your "Points of Record" of the May 6, 1998 Negotiating Committee meeting. It strikes me that point number 9 needs to be addressed. I made the point at the meeting that the Government of Canada set aside the sum of \$1.1 billion based on the epidemiological study, a copy of which you have. Clearly the ultimate settlement must reflect real numbers

I agree with you that the notification program is important and it needs to be as accurate as possible. However, we must be cognizant of the fact that it may not in fact bring out all of the people infected with HCV. It seems, that two issues need to be addressed: first, is the epidemiological study accurate - you say it may not be; and second, assuming there is a difference between the number of people who self-identify as a result of the notification program and the epidemiological study (once there is a study that we are both prepared to accept), how do we address that difference? Further, we must also deal with plaintiffs who decide to opt out of the class actions.

I agree with you that it is too early to resolve these differences, ultimately the devil is in the detail and as a matter of practicality the problem may go away. Nevertheless I want to make certain that my concerns in this regard are recorded.

Yours very truly,

  
I. G. Whitehall, Q.C.  
Chief General Counsel

MPY.12.1998 1:58PM JUSTICE (613)952-8713

NO.902 P.3

- 2 -

c.c. Cliff Prowse

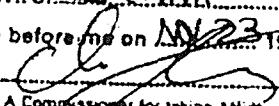
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## POINTS OF RECORD

### HCV Negotiating Meeting - May 6, 1998 - Vancouver

#### Attendees

J.J. Camp, Q.C. ("JJC")  
Sharon Matthews  
Douglas Elliott  
Dawna Ring  
Michel Savonitto  
Pierre Lavigne  
Paul Lamek, Q.C.  
Cliff Sutts  
Bonnie Tough  
David Neave  
Henri Pettit  
Claude Lapointe  
Sandy Graham  
Catherine Moore  
Ivan Whitehall ("IW")  
John Haig  
Clif Prowse ("CP")  
Keith Johnston  
Christine Henderson  
Darlene Acton  
Robert Monette  
Andre Lespérance

This is Exhibit "HH" referred to in the  
affidavit of JJC  
made before me on May 23, 1999  
  
A Commissioner for taking Affidavits  
for British Columbia

1. Dr. Frank Anderson, a Vancouver gastroenterologist spoke to the group for approximately one hour on HCV, including transmission of HCV, symptomology, clinical course of HCV and treatment modalities.

2. JJC agreed to confer with Dr. Anderson pertaining to the subject of present and possible future funding into HCV research and report to IW.

3. IW and CP confirmed their instructions that we carry on our negotiations for persons infected in the 86-90 period.

4. On the subject of the certification of the Ontario action, an impasse pertaining to the consent of the defendants has apparently been reached. IW agreed to meet with the Ontario representatives in an attempt to resolve this impasse.

5. JJC advised that the Points of Record from our last negotiating meeting were correct. It was agreed that unless the parties take issue with the Points of Record, it would be assumed that they are correct.

6. On the subject of the source of funding for secondarily infected HIV claimants, IW said that he still had to obtain instructions on this issue. The neat issue is whether the funding will come out of separate funds earmarked for the Emergency Assistance Program or come out of the \$1.1 billion package.

7. On the subject of notification, IW proposed that we strike a joint working committee to determine an appropriate course of action. This working group should have access to experts and consultants. IW suggested some names including Dr. Pi, Dr. Evelyne Wallace, Dr. Susan King as well as resources at the LCDC. JJC indicated that the claimants already have a subcommittee working on this subject.

It was agreed that a joint committee would be established. Andre Lespérance, Sandy Graham, CP and IW will sit on this committee for the governments. Sharon Matthews, Pierre Lavigne and Heather Peterson will sit on this committee for the claimants. Bonnie Tough indicated that she would appoint someone to represent the interests of the hemophiliacs.

It was agreed that this committee would confer quickly and report back to the negotiating committee by the end of May 1998 with a notification proposal.

There was a commitment from both sides that the advertising campaign would be as thorough and effective as reasonably possible so as to ensure that it reached as many HCV claimants as possible. It was agreed that the fewer the number of HCV claimants who were not unearthed by this notification program, the better.

It was further agreed that once the notification campaign has been agreed upon, it would be placed before the courts of those provinces where certification orders are in place for court approval. It was further agreed that this notification campaign must dovetail with the various court requirements pertaining to notifications and communications with potential HCV claimants.

The notification campaign will have an end date to be recommended by the joint committee.

IW advised that the advertising campaign will have to be national in scope. Similarly, any settlement made as a result of successfully concluding our negotiations will be made on a national basis. That is to say, it will be open for acceptance to persons within the certified classes as well as to any persons who may not be included in certified classes.

8. It was agreed that the negotiations will continue pending the work of this notification subcommittee and while any notification campaign is under way.

9. IW noted that there will have to be a further notification campaign describing the settlement package if a settlement is reached and advising of dates for opting out or opting in as the case may be. He proposed that there should be an end date



for persons who are not contained in any class. He proposed a twenty year time frame. It was agreed that this matter would be left for further study.

10. On the subject of damages, IW indicated that a pure individual assessment of damages is not the preferred route for the governments. IW proposed a damages assessment program which would combine a grid approach and an individual assessment approach. Without putting too fine a point on it, he proposed that the fund of money for settlement purposes would be left to grow for the benefit of the HCV claimants. There would be an initial, relatively modest payment to all HCV claimants upon proof of infection. These persons would be eligible for further compensation if the disease progressed through certain levels. For example, cirrhosis would be a further threshold level which would attract a further award of damages. If the symptoms included fatigue etc. which disabled the HCV claimant from working, an economic loss award would be made in addition to the general damage award. A further threshold level might be decompensation of the liver or liver cancer. Again general damages would be increased and if the HCV claimant was disabled from working, an economic loss would also be awarded.

IW also suggested that the parties should consider whether there should be a cap on economic losses. For example, economic losses might be capped at a certain percentage of the provable wage loss or it may be subject to an absolute cap on damages for economic loss.

The issue of whether awards would be taxable was raised but not resolved. The issue of whether the awards would be without prejudice to any social assistance was raised but not resolved. IW indicated that at this time the governments are not offering economic damages for past losses. This matter was likewise not resolved.

JJC reiterated the HCV claimants views that an individual assessment of damages is preferred although he recognized that the process had to be streamlined and perhaps the subject of general damages could be formulated into a grid. It was in all parties' interests that the system for assessing damages be streamlined, efficient and inexpensive.

Given the import of this issue, it was agreed that it should be a subject for the whole Negotiating Committee to consider and that a subcommittee on this subject would not be useful.

JJC undertook to respond to the damage outline by IW in writing for the next negotiating committee meeting.

11. On the subject of exigent claims, Doug Elliott spelled out a general form of proposal. Eligibility would consist of either medical urgency or financial urgency. Any advance payment under this scheme would be without prejudice to the overall negotiations and to the rights of any party pertaining to the individual HCV claim. Any monies received by an HCV claimant would be deducted from the amount that claimant would be entitled to from any settlement or judgment. Given the need to streamline the process, it was proposed that there not be an elaborate system of proof. Only major illnesses such as liver cancer, liver transplants, etc. would be eligible for a medical urgency. The suggested amount for medical urgency was \$25,000. Financial urgency would include an inability to work, serious debt problems, etc. The amount proposed for financial urgency would range from \$5,000 to \$25,000. It was proposed that the process would be made by way of applications in writing only. Some form of ADR would be required to assess the claims. The claims would have to be addressed on a pan-Canadian basis. As a best guess, Doug Elliott anticipated approximately 2,500 applications with approximately 1/2 being meritorious.

It was agreed that a joint committee would be formed on the subject of exigent claims and would report back to the Negotiating Committee by the end of May. For the HCV claimants, Doug Elliott, Sharon Matthews, Clint Docken, Phil Tinkler and Michel Savonitto will serve. The federal representatives will be John Haig and IW, and the provinces will appoint one or more persons. Bonnie Tough indicated she would also put a representative for the hemophiliacs on the committee.

12. On the issue of negotiating expenses incurred by the lawyers for HCV claimants, IW said that the proposed budget was a difficult sell. He will recommend it on the following conditions:

- (a) the budget will not be exceeded;
- (b) the budget will be a set off against the \$1.1 billion settlement package;
- (c) all expenses must conform with the Federal Government expense guidelines; and
- (d) expense accounts will be sent to IW's secretary for review and payment.

JJC indicated that he had not conferred with Bonnie Tough or Claude Lapoint on this subject. It was agreed that JJC would confer with his colleagues and respond to IW.

13. It was agreed that the next meeting would be held in Ottawa on June 3, 1998.

14. On the subject of the media, it was agreed that the same "talking points" should obtain as spelled out at our first meeting. All persons at the meeting must be guarded in anything that is conveyed to the press given the political sensitivity of the settlement and surrounding matters.

15. JJC indicated that he could not agree to the request by the government defendants to suspend litigation during the pendency of the negotiations. IW asked that this matter be reconsidered. IW said that the request for abatement of litigation matters does not affect the Ontario certification or any court mandated requirements. JJC agreed to reconsider this issue and respond to IW quickly.

16. IW indicated that individual claimants and lawyers call his office from time to time. He requested the name or names of lawyers for HCV claimants to whom these requests could be directed. JJC agreed that he would respond to this request after he had conferred with his colleagues.

17. On the subject of a waiver of limitation periods, JJC requested that the government defendants waive limitation defences during the pendency of the negotiations. He indicated there were a host of actions waiting to be filed unless this agreement could be reached. IW said he would take instructions from the federal government on this subject. CP said he would do the same. JJC will confer with the CRC on this subject and will follow up with IW and CP.

18. On the subject of frozen blood samples, Pierre Lavigne apprised the group of the background information and the utility of obtaining testing of these samples. It was agreed that this question be referred to the notification and advertising joint subcommittee which would in turn have to liaise with the CRC.

19. On the subject of disease modelling, IW proposed and JJC agreed that we would strike a joint committee to review the issue of disease modelling. This joint committee would retain consultants. For the governments, Christine Henderson, IW and Catherine Moore will serve on this committee. The HCV claimants will appoint Harvin Pitch, Pierre Lavigne, Dawna Ring, Bruce Lemer and Sharon Matthews who form a

subcommittee for the HCV claimants on this subject. Bonnie Tough will provide the name of someone from the hemophiliac group.

20. On the subject of retention of hospital records, CP indicated that he will look into the Krever recommendations that hospital records not be destroyed and will report back.

21. JJC promised to send another copy of the BC questionnaire to IW.

22. IW is still organizing the collection of reference material for the LCDC study to be provided to the HCV claimants.

23. It was agreed that the chair of the HCV subcommittees will call the first meeting for the joint subcommittees.

24. JJC agreed that the defendants are at liberty to provide Dr. Frank Anderson's material to their consultants.

# VOLUME 2

*J.R. Houghton*

No. C965349  
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

Anita Erdean, 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

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AFFIDAVIT OF J.J. CAMP  
VOLUME 2 OF 2

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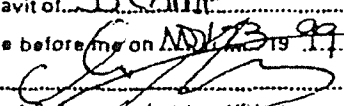
CAMP CHURCH & ASSOCIATES  
Barristers & Solicitors  
4th Floor, Randall Building  
555 West Georgia Street  
Vancouver, BC  
V6B 1Z5

34



**CAMP CHURCH & ASSOCIATES**  
BARRISTERS

J.J. Camp, Q.C.\*  
David P. Church\*  
Joe Fiorante\*  
Andrew J. Pearson  
Sharon D. Matthews  
Ian G. Schildt

This is Exhibit "1" referred to in the  
affidavit of J.J. Camp  
made before me on May 13, 1998  
  
A Commissioner for taking Affidavits  
For British Columbia

4th Floor, Randall Building  
555 West Georgia Street  
Vancouver, B.C.  
Canada V6B 1Z5

Telephone: (604) 689-7555

Facsimile: (604) 689-7554

FILE REF: 96015/001

May 8, 1998

Buchan Derrick & Ring  
#100 - 5525 Artillery Place  
Halifax, Nova Scotia  
B3J 1J2  
Attention: Dawna Ring

Grant Kovacs Norell  
930 - 1040 W. Georgia Street  
Vancouver, BC V6E 4H1  
Attention: Bruce Lemer

Teplitsky, Colson  
#200 - 70 Bond Street  
Toronto, Ontario  
M5B 1X3  
Attention: Harvin Pitch

Pierre Lavigne  
Avocat  
440 Laurier Avenue, W., Suite 200  
Ottawa, Ontario  
K1R 7X6

Dear Sirs/Mesdames:

**RE: HEPATITIS C NEGOTIATIONS - MAY 6, 1998 MEETING**

At the May 6, 1998 joint negotiating committee meeting, Ivan Whitehall sketched out an approach to the assessment of damages which is spelled out in some detail in the notes which I dictated from that meeting and which are attached to this letter. Please ensure that these notes are kept confidential.

As it turned out, Pierre Lavigne, who sits on your committee, remained in Vancouver the following day and he and I spent some time reflecting on this matter. We have come up with the first draft of a counter-proposal.

Before providing details to you, I should make it plain that it was agreed at the negotiating committee that this subject was so critical that no joint subcommittee would be convened. Rather, it was a matter which would require the attention of the whole negotiating committee.

Sincerely,

J.J. Camp

## CAMP CHURCH & ASSOCIATES

The gist of our proposal is predicated on three pillars. The first is that we will have to come up with some kind of a grid for general damages given the 10,000 to 20,000 HCV claimants expected to participate in the plan. The second is that general damages should be governed by the maximum general damages award in Canada today. The third is that there are thresholds or levels that do make sense and that funds can be deferred until those thresholds or levels are reached.

Our thinking is that there would be four levels of participation for general damages. The maximum recovery would be \$250,000 in 1998 dollars and that these dollars would be indexed by CPI the same way that the trilogy cap is indexed. The trilogy cap at this time is approximately \$265,000.

The four levels and the amount of compensation would be comprised as follows:

- (a) the first level - all persons infected with HCV from blood transfusions between 1986 and mid-1990 would receive \$5,000 without proof of any symptomology.
- (b) the second level - HCV claimants who had reached a stage of symptomology which seriously affected their well-being but not cirrhosis or decompensation of the liver. These persons would receive a further \$20,000.
- (c) the third level - HCV claimants who had reached the level of cirrhosis including serious degradation of their well-being. These persons would receive a further \$100,000.
- (d) the fourth level - HCV claimants who had reached a level of decompensation including liver cancer or end-stage liver disease with very serious degradation of their well-being. These persons would receive a further \$125,000.

As you can see, level one eligible HCV claimants would receive 2% of the maximum, level two would receive a further 8% of the maximum, level three would receive a further 40% of the maximum and at level four, you would receive 100% of the maximum. By way of example, a person presenting with liver cancer at the beginning would receive \$250,000, while a person without symptoms would receive \$5,000 with the ability to claim a total of \$250,000, depending on the progression of the disease.

## CAMP CHURCH & ASSOCIATES

Needless to say, these levels would have to be fine tuned by a careful examination of the symptomology necessary at each level.

With respect to wage loss, we propose that this be individually assessed at any time a HCV claimant becomes unable to work because of HCV related illness. There would be no cap pertaining to wage loss. Rather the wage loss would be equivalent to the wage loss any injured claimant would recover in a court of law. We have not reached any opinion with respect to deduction for collateral benefits but, perhaps, we should be satisfied with the law as it stands from the most recent Supreme Court of Canada jurisprudence on this issue. We did think it was appropriate, however, for cross-infected persons who are already receiving HIV compensation to have that compensation deducted from the HCV compensation. This issue needs to be more thoroughly reviewed.

With respect to continuing wage loss, it is our present thinking that this should be paid on a periodic basis to be reviewed by the assessor in much the same way as long term disability plans review continuing wage loss claims. We do not think that the wage loss should have a present value placed upon it. Arguably, this would leave more money in the overall settlement fund to permit it to continue to grow, would avoid any dissipation possibilities, offers security to the individual HCV claimants, offers the benefit of terminating the wage loss if the HCV claimant returns to work, avoids money management costs by the HCV claimants and, indirectly, will promote medical research for better treatment and possible cure for HCV diseases.

Incidentally, we are of the view that we must have a provision that if and when HCV claimants are ever cured, the cure will be taken into account on the damages issues.

With respect to future care costs, we propose that they be paid on a dollar for dollar basis upon proof.

With respect to in trust awards for parents, spouses, children, etc. who offer exceptional care, we propose that these awards be paid on a dollar for dollar basis on provable claims.

With respect to special damages, all special damages should be paid on a dollar for dollar provable basis. Incidentally, special damages must include time off work for HCV claimants to travel to specialists for medical appointments, treatments, etc.

With respect to the adjudication of these awards, we propose that it be a signal person adjudicator with the right to appeal to the courts by either party. Perhaps

CAMP CHURCH & ASSOCIATES

this appeal right should be trial de novo. In the emergency assistance program for HIV claimants, the right to appeal is to the Federal Trial Court and it appears to have been working reasonably smoothly, so I am informed.

The adjudication should be as non-adversarial as possible. Adjudicators will have to be set up in the major centres across Canada.

With respect to taxation, we should take the position that all of the HCV related awards are non-taxable. Incidentally, we should also take the position that any income earned by these settlement funds should be non-taxable.

As you can see, this is a first rough cut but one which largely comports with the threshold approach spelled out by Ivan Whitehall and by me in my earlier settlement letter of December 17, 1997.

I ask you to have your group confer and consider this proposal at the earliest opportunity. I have privately advised Ivan Whitehall that I anticipate that we will have a working proposal back to him before our next meeting on June 3, 1998.

Yours truly,

CAMP CHURCH & ASSOCIATES

By:

J.J. Camp

JJC/lv  
enc.

35

**CAMP CHURCH & ASSOCIATES**  
BARRISTERS

J.J. Camp, Q.C.\*  
David P. Church\*  
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Sharon D. Matthews  
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4th Floor, Randall Building  
555 West Georgia Street  
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FILE REF: 96015/001

May 8, 1998

BY FAX

Pierre Lavigne  
Avocat  
440 Laurier Avenue, W.  
Suite 200  
Ottawa, Ontario  
K1R 7X6

This is Exhibit "J" referred to in the  
affidavit of J.J. Camp  
made before me on May 8, 1998  
A Commissioner for taking Affidavits  
For British Columbia

**Re: Notification Campaign for HCV Claimants**

As you recall at our May 6, 1998 negotiating committee meeting, we formed a joint sub-committee with the defendants on the subject of an advertising campaign to unearth all eligible HCV claimants. The governments have appointed Ivan Whitehall, Clif Prowse, Sandy Graham and Andre Lesperance, all of whom are known to you. Bonnie Tough, to whom I am copying this letter, said that she would also appoint a representative.

You also have the notes that I have dictated from the negotiating committee meeting pertaining to this subject as well as your own notes. As you know, this joint sub-committee has the power to retain consultants and persons identified by Ivan Whitehall included Dr. Pi, Dr. Evelyn Wallace, Dr. Susan King and resources at the LCDC. Needless to say, we will also have to retain a media or advertising consultant.

It is important that we devise a notification campaign that will be as thorough and effective as we can possibly make it. From our point of view, it is extremely important that the fewest possible HCV claimants "fall through the cracks" and therefore we can negotiate for an appropriately low amount of money to be set aside for persons who were legitimately not informed by this advertising campaign. It is my view that this advertising campaign ought to govern the number of HCV claimants included in the cohort and not be used as merely a test of the LCDC statistical approach.

## CAMP CHURCH & ASSOCIATES

In light of the *Inco* case, about which you may be aware, it is important that this 2advertising campaign be conducted with the express approval of the courts in those provinces where certification orders have been made.

I think you should chair the HCV claimants Advertising and Notification Sub-Committee and I undertook that our chair would convene the first meeting of the joint sub-committee. As you know doubt recall, we anticipate that this joint sub-committee will have a plan for the consideration and approval of the negotiating committee at its next meeting on June 3, 1998. Time is very much of the essence. I ask you to get a conference call arranged as soon as possible and attend to this with dispatch.

Please keep me informed.

Yours truly,

CAMP CHURCH & ASSOCIATES

By: 

for: J.J. Camp

JJC:mf

cc: Heather Peterson  
Sharon Matthews  
Bonnie Tough

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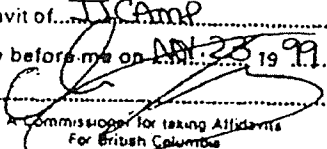


#2000

# CAMP CHURCH & ASSOCIATES

## BARRISTERS

J.J. Camp, Q.C.\*  
David P. Church\*  
Joe Fiorante\*  
Andrew J. Pearson  
Sharon D. Matthews  
Ian G. Schildt

This is Exhibit \*KK\* referred to in the  
affidavit of JJ Camp  
made before me on May 28 1998  
  
A Commissioner for taking Affidavits  
For British Columbia

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### FAX COVER SHEET

TO: Gignac, Sutts  
ATTN: Harvey T. Strosberg, Q.C.

FAX NO.: (519) 258-<sup>9503</sup>~~9527~~  
LOCATION: Windsor, Ontario

TO: Pierre Lavigne  
ATTN:

FAX NO.: (613) 782-2445  
LOCATION: Ottawa, Ontario

FROM: J.J. Camp

DATE: May 15, 1998

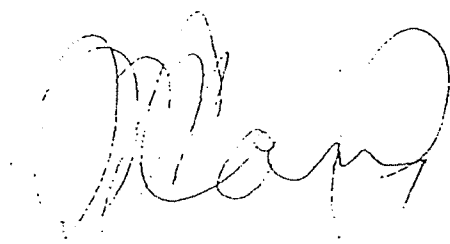
NUMBER OF PAGES (INCLUDING COVER PAGE): 3

MESSAGE:

RE: HEPATITIS C NEGOTIATIONS

Attached is a self-explanatory very rough analysis of the estimate of damages for our cohort. Given the extraordinary sensitivity of this document, I am sending this document to the two of you only at this time and I am having my secretary call yours so as to ensure that it is received on a highly confidential basis.

I suggest the three of us deliberate this matter before it is raised with any of our coalition lawyers.



\* Denotes Law Corporation

## HEPATITIS C DAMAGES ESTIMATE

I have done a very rough analysis of the compensation offer of \$1.1 billion. I have worked out scenarios on a per thousand basis with damages broken down into general damages and economic losses.

### General Damages

I have assumed the following for each 1,000 claimants (derived from my letter of May 8, 1998):

(a)	100% get:	\$5,000	\$5,000,000
(b)	50% get a further:	\$20,000	\$10,000,000
(c)	25% get a further:	\$100,000	\$25,000,000
(d)	10% get a further:	<u>\$125,000</u>	<u>\$12,500,000</u>
	Total:	\$250,000	\$52,500,000

### Economic Losses

I have assumed that 25% of the claimants will have modest economic losses with an average economic loss of \$50,000. This amounts to \$12,500,000 per thousand claimants. I have further assumed that 10% of the claimants will have considerable economic losses with an average economic loss of \$100,000. This amounts to \$10,000,000 per thousand claimants.

### Scenarios

We can then develop the scenarios depending on the size of the cohort. For ease of reference, I have assumed three scenarios, 10,000 claimants, 15,000 claimants and 20,000 claimants.

For general damages the following amounts fall out of this analysis:

(a)	10,000 claimant scenario	\$525,500,000
(b)	15,000 claimant scenario	\$787,500,000
(c)	20,000 claimant scenario	\$1,050,000,000.

For economic losses the following amounts fall out of these assumptions:

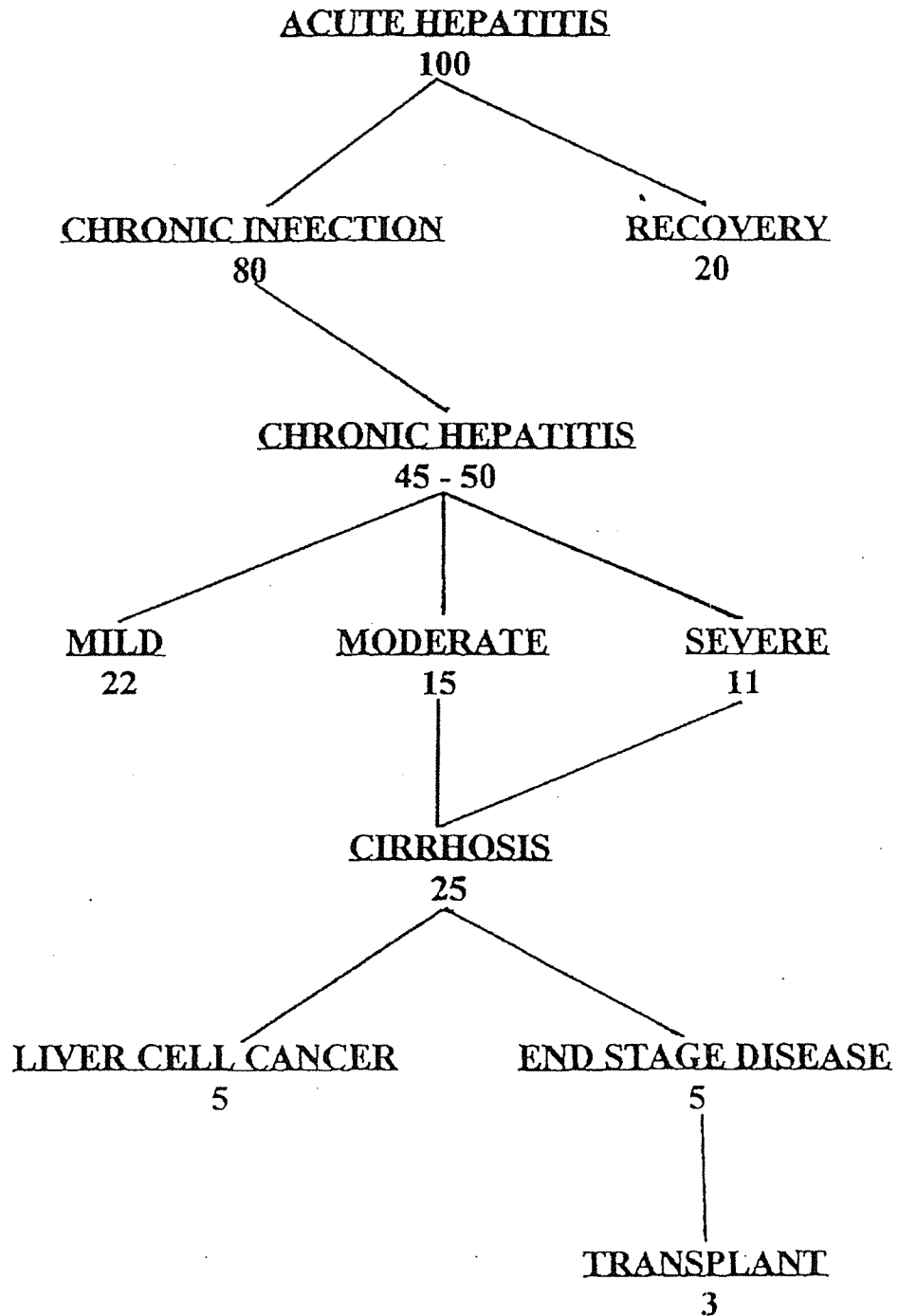
(a)	10,000 claimant scenario	\$225,000,000
(b)	15,000 claimant scenario	\$337,500,000
(c)	20,000 claimant scenario	\$450,000,000.

Adding the general damages and economic losses together on these assumptions we get the following amounts:

(a)	10,000 claimant scenario	\$750,500,000
(b)	15,000 claimant scenario	\$1,125,000,000
(c)	20,000 claimant scenario	\$1,500,000,000.

I cannot overestimate how rough this analysis is but we have to start somewhere.

**HEPATITIS C**  
**Natural History: Schematic**



37



Ministry of  
Attorney General

Legal Services Branch

1301 - 855 Homby Street  
Vancouver, British Columbia  
V6Z 2H4  
Telephone: (604) 660-3093  
Facsimile: (604) 660-2636

**WITHOUT PREJUDICE**

May 19, 1998

By Fax 689-7554

Camp Church & Associates  
Barristers and Solicitors  
4th Floor, 555 West Georgia Street  
Vancouver, B.C.  
V6B 1Z5

Attention: J. J. Camp

Dear J.J. Camp:

Re: Hepatitis C Negotiations

I refer to your letter of May 13, 1998 with respect to subrogation and secondarily infected HIV claimants and note what you write.

I too will be seeking instructions on these points. However, I would refer you to the Ministers' announcement which indicated that the financial assistance was being offered to Canadians who were infected by Hepatitis C during the period 1986-1990 and "the package" would include individuals infected with HIV by a partner or a parent who was infected by blood products.

As you are aware, no admission of liability is made for the purpose of these negotiations, and the question of the extent of any no fault basis for compensation and the method of compensation are the subject of our ongoing negotiations.

Yours truly,

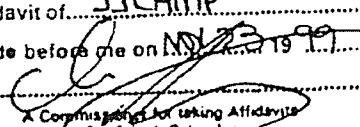
D. Clifton Prowse  
Barrister and Solicitor

This is Exhibit "LL" referred to in the  
affidavit of JJCAMP  
made before me on May 19 1998  
A Commissioner for taking Affidavits  
For British Columbia

38

**CAMP CHURCH & ASSOCIATES**  
BARRISTERS

J.J. Camp, Q.C.\*  
David P. Church\*  
Joe Fiorante\*  
Andrew J. Pearson  
Sharon D. Matthews  
Ian G. Schildt

This is Exhibit "MM" referred to in the  
affidavit of JJCAMP  
made before me on May 23, 1998  
  
A Commissioner for taking Affidavits  
For British Columbia

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FILE REF: 96015/001

May 21, 1998

VIA FAX NO. (519) 258-9527

VIA FAX NO. (613) 782-2445

Gignac, Sutts  
600 Westcourt Place, 251 Goyeau Street  
P.O. Box 670  
Windsor, Ontario  
N9A 6V4

Pierre Lavigne  
Avocat  
440 Laurier Avenue West, Suite #200  
Ottawa, Ontario  
K1R 7X6

Attention: Harvey T. Strosberg, Q.C.

Dear Sirs:

Re: Endean et al. v. The Canadian Red Cross et al.  
S.C.B.C. Action No. C965349, Vancouver Registry

I am faxing the two of you only. I had a long and fairly fruitful discussion with Ivan Whitehall on the subject of agreeing on a damage assessment plan without identifying the exact number of claimants who may be included in our cohort. Ivan told me that he is prepared to go down this road, but only if he perceives that the risk of the \$1.1 billion being exceeded is a manageable risk. He said that we would have to use his cohort numbers of 20,000 or 22,000. He said if our approach on damages looks reasonable to him, he is prepared to make arrangements for a conference call of deputy ministers across Canada to deal with the issue.

I will be meeting with Dr. Frank Anderson on Saturday to identify with more clarity the levels or layers of compensation in our general damage grid.

We discussed the possibility of the \$1.1 billion offer disappearing given the ongoing political machinations. Like us, he believes that time is very much of the essence.

51614 1

\* Denotes Law Corporation

CAMP CHURCH & ASSOCIATES

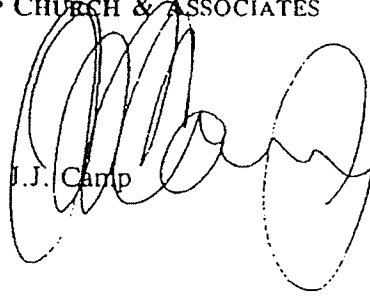
I anticipate faxing a draft letter to you on Sunday or first thing on Monday for your consideration. I told Whitehall that I would try and have a letter to him for consumption on his side of the table by June 3, 1998.

Yours truly,

CAMP CHURCH & ASSOCIATES

By:

J.J. Camp



JJC:lv



39

**CAMP CHURCH & ASSOCIATES**  
**BARRISTERS**

J.J. Camp, Q.C.\*  
David P. Church\*  
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Andrew J. Pearson  
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FILE REF: 96015/001

**BY FAX**

Gignac, Sutts  
600 Westcourt Place, 251 Goyeau Street  
P.O. Box 670  
Windsor, Ontario  
N9A 6V4  
Attention: Harvey T. Strosberg, Q.C.  
Attention: Cliff Sutts

Elliott & Kim  
#304 - 150 York Street  
Toronto, Ontario  
M5H 3S5  
Attention: Douglas Elliott

Docken & Company  
215 Atrium II  
#840 - 6th Avenue South West  
Calgary, Alberta  
T2P 3E5  
Attention: Clint G. Docken, Q.C.

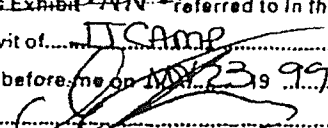
Kenneth Arenson  
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4th Floor, Randall Building  
555 West Georgia Street  
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May 21, 1998

This is Exhibit AN referred to in the  
affidavit of J.J. Camp  
made before me on May 23 1999  
  
A Commissioner for taking Affidavits  
For British Columbia

Buchan Derrick & Ring  
#100 - 5525 Artillery Place  
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B3J 1J2  
Attention: Dawna Ring

Kapoor, Selnes, Klimm & Brown  
P.O. Box 2200  
Melfort, Saskatchewan  
S0E 1A0  
Attention: Bill Selnes

Tinkler Morris  
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Toronto, Ontario  
M5H 3S5  
Attention: Philip S. Tinkler

Teplitsky, Colson  
#200 - 70 Bond Street  
Toronto, Ontario  
M5B 1X3  
Attention: Harvin Pitch

**CAMP CHURCH & ASSOCIATES**

Pierre Lavigne  
Avocat  
440 Laurier Avenue, W.  
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Ottawa, Ontario  
K1R 7X6

Marchand, Magnan, Melançon, Forget  
Tour de la Banque Nationale  
600, de la Gauchetière Ouest  
Bureau 1640  
Montreal, Quebec H3B 4L8

Attention: Michel Savonitto  
Attention: Bertrand Paiement

Genest Murray DesBrisay Lamek  
#700 - 130 Adelaide West  
Toronto, Ontario  
M5H 4C1  
Attention: Paul Lamek, Q.C.

Grant Kovacs Norell  
930 - 1040 W. Georgia Street  
Vancouver, BC V6E 4H1  
Attention: Bruce Lemer

Dear Sirs/Mesdames:

**RE: HEPATITIS C NEGOTIATIONS**

Enclosed is a copy of Ivan Whitehall's letter of May 20, 1998 and my response on the subject of waiving limitation periods and on the subject of suspending litigation demands.

You will see that I have requested similar assurances from the provincial and territorial governments.

I also enclose correspondence passing between myself and the Red Cross on this issue. I am less hopeful that we will get the Red Cross to agree to waive limitation periods but, as I understand it, most of you are content with letters from the federal and provincial governments.

It occurs to me that the agreement to suspend litigation demands during the negotiations should be communicated to those lawyers who have orphan cases. Perhaps this should be an agenda item for our next coalition conference call.

Yours truly,

**CAMP CHURCH & ASSOCIATES**

By:

J.J. Camp

JJC:hp  
Encls.

# TABLE OF CONTENT

## Volume II

40.	*EXHIBIT OO Letter to Department of Justice and Ministry of Attorney General from Camp Church & Associates, with attached Outline for Assessment of Damages dated 28 May 98/sworn 23 November 99
41.	*EXHIBIT PP Letter to Department of Justice et al. from Camp Church & Associates, with Points of Record attached dated 5 June 98/sworn 23 November 99
42.	*EXHIBIT QQ Letter to Department of Justice et al. from Camp Church & Associates dated 4 June 98/sworn 23 November 99
43.	*EXHIBIT RR Newspaper Article entitled "Hepatitis C survivors may be fewer than thought" dated 19 June 98/sworn 23 November 99
44.	*EXHIBIT SS Letter to Department of Justice and Ministry of Attorney General from Camp Church & Associates, with Proposal attached dated 22 June 98/sworn 23 November 99
45.	*EXHIBIT TT Memorandum to Department of Justice and Ministry of Attorney General from Camp Church & Associates, with Agenda attached dated 25 June 98/sworn 23 November 99
46.	*EXHIBIT UU Letter to Gignac Sutts et al. from Camp Church & Associates, with Minutes of meeting attached dated 3 July 98/sworn 23 November 99
47.	*EXHIBIT VV Letter to Gignac Sutts et al. from Camp Church & Associates, with Counter Proposal attached dated 13 July 98/sworn 23 November 99
48.	*EXHIBIT WW Letter to Gignac Sutts, et al. from Camp Church & Associates dated 21 August 98/sworn 23 November 99
49.	*EXHIBIT XX Letter to Gignac Sutts, et al. from Camp Church & Associates dated 11 September 98/sworn 23 November 99
50.	*EXHIBIT YY Letter to Department of Justice from Camp Church & Associates dated 18 September 98/sworn 23 November 99
51.	*EXHIBIT ZZ Letter to Department of Justice and Ministry of Attorney General

	from Camp Church & Associates, with Revised Proposal for Hep C Emergency Plan attached dated 21 September 98/sworn 23 November 99
52.	*EXHIBIT AAA Letter to Department of Justice and Ministry of Attorney General from Camp Church & Associates, with attached letter from Camp Church & Associates to Dr. Samuel Lee dated 20 October 98/sworn 23 November 99
53.	*EXHIBIT BBB Letter to Camp Church & Associates from Department of Justice dated 15 October 98/sworn 23 November 99
54.	*EXHIBIT CCC Letter to Gignac Sutts, et al. from Camp Church & Associates dated 23 October 98/sworn 23 November 99
55.	*EXHIBIT DDD Letter to Gignac Sutts from Camp Church & Associates dated 27 October 98/sworn 23 November 99
56.	*EXHIBIT EEE Letter to Camp Church & Associates from Department of Justice dated 2 November 98/sworn 23 November 99
57.	*EXHIBIT FFF Letter to Department of Justice and Ministry of Attorney General from Camp Church & Associates, with Offer to Settle attached dated 16 November 98/sworn 23 November 99
58.	*EXHIBIT GGG Letter to Camp Church & Associates from Department of Justice dated 18 November 98/sworn 23 November 99
59.	*EXHIBIT HHH Letter to Department of Justice and Ministry of Attorney General from Camp Church & Associates dated 20 November 98/sworn 23 November 99
60.	*EXHIBIT III Letter to Camp Church & Associates et al. from Department of Justice, enclosing draft Settlement Agreement dated 8 December 98/sworn 23 November 99
61.	*EXHIBIT JJJ Letter to Gignac Sutts, et al. from Camp Church & Associates dated 9 December 98/sworn 23 November 99
62.	*EXHIBIT KKK Letter to Camp Church & Associates from Department of Justice dated 31 March 99/sworn 23 November 99
63.	*EXHIBIT LLL Letter to Department of Justice and Ministry of Attorney General from Gignac Sutts dated 5 May 99/sworn 23 November 99
64.	*EXHIBIT MMM Letter to Gignac Sutts from Department of Justice dated 6 May 99/sworn 23 November 99

65.	*EXHIBIT NNN Letter to Camp Church & Associates from Department of Justice dated 10 June 99/sworn 23 November 99
66.	*EXHIBIT OOO Letter to Department of Justice from Camp Church & Associates dated 24 August 99/sworn 23 November 99
67.	*EXHIBIT PPP Letter to Camp Church & Associates from Department of Justice dated 8 September 99/sworn 23 November 99
68.	*EXHIBIT QQQ Letter to Camp Church & Associates from Navigant Consultant Inc., with Interim Billing attached dated 19 November 99/sworn 23 November 99
69.	*EXHIBIT RRR 1986-1990 Hepatitis C Class Action Settlement Protocols Transfused Plan sworn 23 November 99
70.	*EXHIBIT SSS Letter to Hodgson Tough Shields DesBrisay O'Donnell from Camp Church & Associates dated 2 September 99/sworn 23 November 99
71.	*EXHIBIT TTT Memorandum to Ivan Whitehall et al. from J.J. Camp, with prior Memorandum to same recipients attached dated 1 October 99/sworn 23 November 99
72.	*EXHIBIT UUU Letter to Department of Justice from Camp Church & Associates, with prior correspondence attached dated 15 October 99/sworn 23 November 99
73.	*EXHIBIT VVV Memorandum to Ivan Whitehall et al. from J.J. Camp, with memo from Sharon Matthews to file attached dated 23 September 99/sworn 23 November 99
74.	*EXHIBIT WWW Letter to Gignac Sutts from Camp Church & Associates dated 10 November 99/sworn 23 November 99
75.	* EXHIBIT WWW Letter to Harvey Strosberg, Dawna Ring, Douglas Elliott, Bill Selnes, Clint Docken, Philip Tinkler, Kenneth Arenson, Harvin Pitch, Pierre Lavigne, Michel Savonitto, Bonnie Tough, David Neave, Bruce Lemer and Angus Mackinnon- Re: Class Counsel Fees - Public Relations dated 09 August 99/sworn 23 November 99
76.	* EXHIBIT YYY Statement of Disbursements Over Time Re: Endean v. Red Cross, et al sworn 23 November
77.	*EXHIBIT ZZZ Letter to Department of Justice and Ministry of Attorney General from Camp Church & Associates dated 29 March 99/sworn 23 November 99
78.	EXHIBIT F Letter to Buchan, Derrick & Ring from Camp Church & Associates dated 24 September, 1997/sworn 23 November

40

**CAMP CHURCH & ASSOCIATES**  
BARRISTERS

RECEIVED

J.J. Camp, Q.C.\*  
David P. Church\*  
Joe Fiorante\*  
Andrew J. Pearson  
Sharon D. Matthews  
Ian G. Schildt

This is Exhibit "OO" referred to in the  
affidavit of JJCAMP  
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A Commissioner for taking Affidavits  
For British Columbia

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FILE REF: 96015/001

May 28, 1998

VIA FAX NO. (613) 952-8713

VIA FAX NO. 660-2636

Ivan G. Whitehall, Q.C.  
Chief General Counsel  
Department of Justice  
Room 2341, 284 Wellington Street  
Ottawa, Ontario  
K1A 0H8

Ministry of Attorney  
General Legal Services Branch  
1301 865 Hornby Street  
Vancouver BC V6Z 2H4

Attention: D. Clifton Prowse

Dear Sirs:

**RE: HEPATITIS C NEGOTIATIONS**

Attached is a outline for the assessment of damages. I want to make it clear that this proposal pertains only to the HCV claimants represented by our coalition of lawyers. I have not conferred with any of the counsel for the hemophiliacs.

It is important, in my opinion, for me to explain some of the features. I invite you to call me once you have had an opportunity to read the proposal and before you disseminate it.

Needless to say, the proposal is very sensitive and confidentiality must be ensured.

Yours truly,

CAMP CHURCH & ASSOCIATES

By:

J.J. Camp

JJC:hp  
Encl.



**CAMP CHURCH & ASSOCIATES**  
**BARRISTERS**

J.J. Camp, Q.C.\*  
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May 28, 1998

VIA FAX NO. (613) 952-8713

Ivan G. Whitehall, Q.C.  
Chief General Counsel  
Department of Justice  
Room 2341, 284 Wellington Street  
Ottawa, Ontario  
K1A 0H8

Dear Sir:

**RE: HEPATITIS C NEGOTIATIONS - DAMAGES PROPOSAL**

As promised, on behalf of the HCV claimants represented by our coalition of lawyers, we propose an outline for damage assessment. We have not conferred with any of the counsel for the hemophiliacs.

What follows is a general outline for compensation which we hope will meet with a positive response and can then be refined into a formal settlement document to be laid before the courts in British Columbia, Quebec and Ontario. If this general proposal is agreeable, in our opinion, we will be able to commence administering and paying claims quickly.

**DISEASE PROCESS**

1. As you are aware, our firm has been approached by approximately 440 HCV claimants to date. From the information developed from this cohort, it appears that the vast majority of these claimants are not faced with serious pathological symptoms of fibrosis, cirrhosis or end stage liver disease. Indeed, although the majority are faced with fatigue, diffuse

## CAMP CHURCH & ASSOCIATES

aches and pains including headaches and flu like symptoms, they are able to function and cope with their present symptoms.

2. We do however wish to emphasize several features associated with this disease. First and foremost is the stress and anxiety experienced by Hepatitis "C" claimants having been innocently afflicted with a generally untreatable disease which may erupt and ravage the claimant decades into the future. In our experience, many Hepatitis "C" claimants are also very anxious about the transmission of the disease which often inhibits him or her both mentally and physically. Included under this component is restrained or protected sexual relations for fear of infecting a spouse or partner and the shunning by family and acquaintances. For some, the family has become dysfunctional. Those who suffer from pain are precluded from taking analgesics such as Tylenol for fear of causing further liver damage. We appreciate that these notions fall within the rubric of "loss of enjoyment of life" but we consider them very important to the quantification of damages for Hepatitis "C" victims. Even HCV claimants who are generally asymptomatic express concerns about many of these problems even down to such things as the painful invasive procedure of having biopsies periodically performed on them.

3. In addition, many HCV claimants are extremely anxious about the possibility of loss of employment giving rise to financial insecurity. This is often exacerbated by the feature of becoming *uninsurable for life*, disability and mortgage insurance. In addition, most HCV claimants are aware of the possibility of interferon treatment with its attendant costs and very serious side effects. We also point out that most HCV claimants must either curtail or completely eliminate the consumption of alcohol.

4. We highlight these features to underscore the reasonableness of the following settlement proposals.

## COHORT SIZE

5. We have not had an opportunity to carefully assess the LCDC report but we do wish to make a few anecdotal comments on cohort size. First, extrapolation from the British

## CAMP CHURCH & ASSOCIATES

notification program adjusted for higher seropositivity in British Columbia, suggests that cohort size across Canada is more likely to be in the 10,000 to 12,000 range. This estimate accords with the numbers being forecasted in Saskatchewan and Nova Scotia from their notification programs.

6. An advertising campaign across Canada is not likely to produce as many HCV claimants as the personal letter-writing campaign in British Columbia which employed additional resources such as tracking persons down through the British Columbia universal automobile insurance system.

7. Mortality statistics suggest that something in the order of fifty percent of persons who would otherwise be eligible for compensation, die within approximately ten years from causes unrelated to HCV.

8. We also point out that the U.S. and Canadian experience with class actions demonstrates that there will be a significant percentage of claimants who will simply choose not to be compensated for whatever reason.

9. With respect to the cohort size, we propose that this matter be left in abeyance at this time on the understanding that the parties will jointly undertake an effective notification campaign to identify all persons transfused during the material time and to encourage them to get tested for HCV. The parties will also jointly advertise the terms of this damage assessment proposal if and when agreed upon.

## ADJUDICATION OF DISPUTES

10. With respect to the adjudication of disputes, the claims process will have to be simple, efficient, inexpensive and expedient. We propose that the adjudication of any disputes be handled by a single arbitrator established in all of the major centres across Canada. At this time we suggest Vancouver, Edmonton, Regina, Winnipeg, Toronto, Ottawa and possibly other centres in Ontario, Montreal and possibly other centres in Quebec, and Halifax.

## CAMP CHURCH & ASSOCIATES

11. If either the claimants or the defendants are not satisfied with the decision of the referee, that decision would be appealable to a superior court judge in the appropriate jurisdiction.

12. The terms of reference for the appointment of referees and the refereeing of disputes will be left for further discussion after an agreement in principle is reached. As noted above, we will support a process which is simple, efficient, inexpensive and expedient.

### ELIGIBILITY AND PROOF

13. With respect to the issue of entitlement to compensation, we suggest that statutory declarations be used in association with medical or hospital records to satisfy the following requirements:

- (a) the claimant was transfused between January 1, 1986 and July 1, 1990;
- (b) the claimant has tested positive for the HCV antibody; and
- (c) the claimant has not been an injection drug user.

14. In the event a claimant has been an injection drug user, we propose that it will then be incumbent upon the claimant to meet a burden of proof on a balance of probabilities that the HCV infection was attributable to a transfusion during the material time.

15. Secondly infected spouses, partners and children will be treated as if they were primarily infected for compensation purposes. Eligibility will be determined solely on the basis that the spouse, partner or child was infected during the material time, unless the secondarily infected spouse, partner or child was an injection drug user, in which case it will then be incumbent upon the secondarily infected spouse, partner or child to meet a burden of proof on the balance of probabilities that the HCV infection was attributable to their parent, spouse or partner.

## CAMP CHURCH & ASSOCIATES

### END DATE

16. We propose that there be an end date, perhaps July 1, 2015, after which no further new claims could be presented. This date would be 25 years after the last transfusion and would almost certainly capture all claimants.

### PROPOSAL FOR ASSESSMENT OF DAMAGES

17. Our proposal for damages reflects both the symptomatology experienced by the HCV claimants and the physiological effects of HCV.

18. We are certain that your side has also reviewed the settlement provisions pertaining to the cohort of Irish women who became HCV infected. Our proposal is more modest and is not presented on a "labour-management basis".

19. Although this may appear to be self-evident, the proposal must be sufficiently attractive to persuade the vast majority of our own clients as to its reasonableness. Failure to do so will result in a significant number of class members opting out of the class proceeding.

20. An unreasonable damage proposal will also not likely meet the approval of the courts who must be vigilant on behalf of the merged rights of all class members. In our opinion, a court is likely to be favourably influenced by a damages proposal which generally reflects the manner in which a court would assess damages.

21. We wish to reinforce what we have learned from all doctors who have treated HCV claimants. The first and foremost symptom of all HCV patients is fatigue. This fatigue can range from being inconsequential to being totally debilitating. The fatigue is not necessarily progressive and can vary in intensity. It is nevertheless very real and compensable since it degrades the quality of life. The unanimous medical advice shows that prior to liver decompensation, fatigue is by far and away the foremost symptom rendering claimants unable to participate in full time employment or house work. We do appreciate, however, that if we

## CAMP CHURCH & ASSOCIATES

are to accomplish an efficient and grid-like approach to the issue of general damages, there must be some delineation with respect to damage recoveries of a somewhat arbitrary nature.

### GENERAL DAMAGES

22. We propose the following grid for general damages. We concede that the grid is conceptual only and needs to be refined but we are looking for agreement in principle at this stage. The amounts set forth at each level of injury are progressive and cumulative. That is to say, if a claimant is entitled to Level 4 compensation, that claimant would recover a total of \$165,000 made up of the cumulative total of the underlying levels. The maximum amount of recoverable damages is equal to the upper limit established by the Supreme Court of Canada which presently stands at approximately \$265,000.

- Level 1 - all claimants who contract HCV will get \$15,000 regardless of symptoms. These claimants will remain eligible for further damage awards in the event their disease or their symptoms progress and worsen;
- Level 2 - all claimants who are significantly symptomatic as a result of HCV infection or associated conditions will recover a further \$25,000;
- Level 3 - all claimants who show fibrotic change to the liver or are seriously symptomatic as a result of HCV infection or associated conditions would recover a further \$50,000;
- Level 4 - all claimants who show cirrhotic change to the liver or are extremely symptomatic as a result of HCV infection or associated conditions would recover a further \$75,000; and
- Level 5 - all claimants who show decompensation of the liver, including liver cancer and other end stage diseases including debilitating or fatal associated conditions such as thrombocytopenia (low platelets), B-cell lymphoma and mixed cryoglobulinemia will recover a further \$100,000.

## CAMP CHURCH & ASSOCIATES

### INFLATION

23. We propose that all of these amounts, including the ceiling amount of approximately \$265,000, be adjusted annually by a cost of living index.

### ECONOMIC LOSSES

24. With respect to economic losses, we propose that they be assessed on an individual basis. We reiterate that at this time there are relatively few claims for substantial economic loss.

### INCOME LOSS

25. We propose that all past, present and future provable income losses be awarded.

26. Loss of income will be assessed periodically. The periodic feature will be refined once an agreement in principle is reached. This provision would be necessary, for example, where HCV claimants undertake interferon treatment which often disables them for the treatment period. It would also be needed if and when new and improved treatment modalities come into existence or a cure is ever found which permits claimants to return to work.

### CARE COSTS

27. The cost of all past and provable future care costs will be recoverable. At the moment, there are very few of these claims to our knowledge.

### IN TRUST AWARDS

28. Parents, spouses, children, etc., with provable in trust claims will recover amounts commensurate with those claims. Again, there are few of these claims to our knowledge.

## **CAMP CHURCH & ASSOCIATES**

### **OTHER SPECIAL DAMAGES**

29. All special damages including medication costs will be recoverable. We note that one of the special damages which has frequently been brought to our attention by many claimants is the time off work, travel costs and other costs associated with travelling to doctors for medical appointments, treatments, etc.

### **DEATH CLAIMS**

30. With respect to persons deceased as a result of HCV related causes, we propose that all damages which would ordinarily be awarded in a fatal accident claim will be recoverable. In addition, we propose a payment of \$50,000 to be paid to the estate of the deceased. Parents, spouses, partners and children will be entitled to have claims assessed for loss of care, companionship and guidance and the value of services rendered.

31. The payment of \$50,000 to the estate of the deceased and the payment of any awards for loss of care, companionship and guidance will not be subject to the upper limit of \$265,000.

32. To our knowledge, there are relatively few death claims that arise out of HCV related causes.

### **NO SUBROGATION CLAIMS**

33. We propose that no subrogated claims for such entities as long term disability insurers, hospital insurance schemes, social assistance providers and the like, be paid out of the Fund.

### **NO DISENTITLEMENT FROM OTHER GOVERNMENT PROGRAMS**

34. Compensation to any HCV claimant will not disentitle that claimant from any other compensation pursuant to any government program such as Canada Pension Plan, Old Age Assistance, Social Assistance, Veterans' Allowance, and the like.



## CAMP CHURCH & ASSOCIATES

### INVESTMENT OF COMPENSATION FUNDS

35. The sum of \$1,100,000,000 ("Fund") will be paid to a trustee mutually acceptable to the parties who will invest and administer the funds until the retirement of the Fund.

36. Any interest earned by the Fund will be accumulated in the Fund and will not be subject to income tax but will be maintained tax free as if it were invested by Her Majesty the Queen in Right of Canada.

### RESIDUE IN THE FUND

37. This proposal assumes that the federal and provincial governments take both the benefit and the burden of the compensation offer of \$1.1 billion being either too much or too little. If, after all payments have been made out of the Fund, there is a residue in the Fund, it shall be paid to the federal and provincial governments on a pro rata basis. If there is a deficit in the Fund at any time, that deficit will be made up by the federal and provincial governments on a pro rata basis.

38. We are reasonably confident that the \$1.1 billion offer will be sufficient to meet all demands on it for reasons which include the following:

- (a) the dates of infection for the subject cohort range from January 1, 1986 to January 1, 1990 and the disease process has been at work in this cohort for a maximum of twelve years. As you are aware, the disease process does not progress to serious symptoms for the majority of HCV infected persons for a long period of time. This will have the effect of both diminishing the size of present claims and delaying most substantial claims for a period measured in several if not many years;
- (b) the average age of our cohort is somewhat older than the average age of Canadians in general and this serves to diminish the economic losses;
- (c) the cohort size is likely to be much smaller than forecast by the I.C.D.C study.

## **CAMP CHURCH & ASSOCIATES**

- (d) there are advances in medical science pertaining to HCV. For example, Ribivarin in conjunction with Interferon is showing a substantial improvement in the treatment of HCV patients;
- (e) there remains the distinct possibility of a cure being found for HCV in the fullness of time; and
- (f) prudent investment will enhance the Fund over time.

39. It is our opinion that there is a greater risk that the Fund, if properly invested, will turn out to be too great rather than too small and we reiterate that any excess funds will revert to the federal and provincial governments.

### **AWARDS WILL NOT BE TAXABLE**

40. In accordance with the general legal principles extant in Canada, we propose that none of the HCV compensation would be taxable.

### **MANAGEMENT AND INVESTMENT FEES**

41. Because economic losses will be reviewed periodically, there is no need to adjust the awards upward with a management and investment fee component.

### **COSTS AND DISBURSEMENTS**

42. The costs of any proceeding before a referee or on appeal shall be in the discretion of the referee or the judge and be payable out of the Fund. These costs will include the costs of medical reports, hospital records, adjudication costs, and the reasonable costs of any legal representation.

### **LEGAL COSTS AND DISBURSEMENTS IN THE CLASS ACTIONS**

43. Legal costs and disbursements in the class actions shall be fixed by the courts in British Columbia, Quebec and Ontario and shall be paid out of the Fund.

CAMP CHURCH & ASSOCIATES

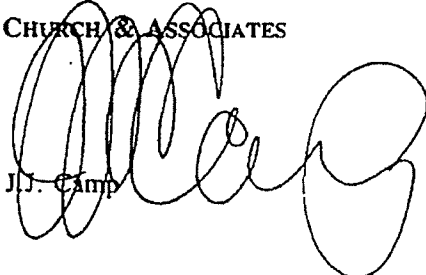
44. We view time being of the essence and we would appreciate having a response from you at your earliest convenience. Needless to say, the writer will be pleased to confer with you.

Yours truly,

CAMP CHURCH & ASSOCIATES

By:

J.J. Camp



JJC:hp

cc: Clif Prowse

41

**CAMP CHURCH & ASSOCIATES**  
BARRISTERS

J.J. Camp, Q.C.\*  
David P. Church\*  
Joe Fiorante\*  
Andrew J. Pearson  
Sharon D. Matthews  
Ian G. Schildt

FILE REF: 96015/001

VIA FAX

Ivan G. Whitehall, Q.C.  
Chief General Counsel  
Department of Justice  
Room 2341, 284 Wellington Street  
Ottawa, ON K1A 0H8

Ministry of Attorney General  
Legal Services Branch  
1301 865 Hornby Street  
Vancouver, BC V6Z 2H4  
Attention: D. Clifton Prowse

Lapointe, Cayen, Morel  
Barristers & Solicitors  
370 Greber Boulevard, Suite 200  
Gatineau, PQ.  
Attention: Claude M. Lapointe

Dear Sirs/Mesdames:

**RE: HEPATITIS C NEGOTIATIONS**

Enclosed is a copy of the Points of Record for our negotiating meeting on June 3, 1998. Please advise if there are any significant errors, omissions or corrections.

Yours truly,

CAMP CHURCH & ASSOCIATES

By:

J.J. Camp

JJC:hp  
Encl.

52059 1

\* Denotes Law Corporation

4th Floor, Randall Building  
555 West Georgia Street  
Vancouver, B.C.  
Canada V6B 1Z5

Telephone: (604) 689-7555

Facsimile: (604) 689-7554

June 5, 1998

This is Exhibit *PP* referred to in the  
affidavit of *J.J. Camp*  
made before me on *June 23* 19 *99*  
*[Signature]*  
A Commissioner for taking Affidavits  
for British Columbia

**POINTS OF RECORD**  
**HCV NEGOTIATING MEETING, JUNE 3, 1998, OTTAWA**

**Attendees:**

J.J. Camp, Q.C.  
Sharon Matthews  
Pierre Lavigne  
Michel Savonitto  
Dawna Ring  
Paul Lamek, Q.C.  
Clifford Sutts  
Douglas Elliott  
Dale Phillips  
Vicky White  
David Neave  
Henri Petit (and someone else)  
Claude LaPointe  
Collin MacArthur, Q.C.  
Ivan Whitehall, Q.C.  
Clif Prowse  
Sandy Graham  
Catharine Moore  
Andre Lesperance  
Robert Monette  
Christine Henderson  
Micky Smith

**Joint Disease Modelling Committee**

1. Dawna Ring reported on the Joint Disease Modelling Committee.
2. It was agreed that a meeting of physicians and lawyers would be held to come up with a disease model for HCV. The HCV claimants are putting forward Dr. Frank Anderson. The governments are putting forward Dr. Willem (sp?). The hemophiliac group is putting forward Dr. Manook. It was agreed that these doctors would be treated as being neutral and unaligned with any particular interest group.
3. It was further agreed that we would attempt to hold a meeting before the end of June, 1998.
4. It was further agreed that a questionnaire will be jointly developed to go out under a letter, that will also be jointly developed, to the 1986-1990 British Columbia and Nova Scotia cohort of claimants who have been identified by the notification campaigns in each of those provinces. The information gleaned from this process will be used both for disease modelling and for modelling general damages and economic losses.

#### Advertising & Notification Joint Committee

5. Pierre Lavigne reported on the Advertising and Notification Joint Committee.
6. The issue of testing frozen samples remains unresolved.
7. The issue of access to public health databases of infected persons remains unresolved.
8. It was agreed that we would retain a media relations consultant to provide professional advice on the notification campaign.
9. It was further agreed that the contents of the notification notice would comport with the requirements laid down by the class action legislation in each of Quebec, Ontario and British Columbia pertaining to the certification in those provinces. The notice would be harmonized as much as possible and would be also utilized in the provinces which do not have class action legislation.

#### Exigent Claims

10. Doug Elliott reported on the Joint Committee on Exigent Claims.
11. It was agreed that exigent claims would be paid to persons who exhibited certain of the most serious forms of HCV disease as commented upon by Dr. Frank Anderson, along with those who are 100% disabled as a result of HCV disease or related HCV disease. It was further agreed that the payment would be by way of a \$25,000 lump sum amount which would be in the form of an advance against any further claim and would be without prejudice to the issue of eligibility for compensation, liability or any defences.
12. It was further agreed that the payment of exigent claims would not disqualify persons from receiving social assistance. It was further agreed that the intent of the exigent claims was not to disqualify persons from Pharmacare or any related program but that this matter required further deliberation by the Joint Exigent Claims Committee. On the related issue of subrogation by the governments, CP advised that this was not in issue pertaining to the \$1.1 B offer and that he and JJC would sit down and find some appropriate language to give comfort to the claimants on this issue.
13. It was further agreed that exigent claims would be processed by government personnel with a right of appeal to an ADR process for those claimants who were dissatisfied with the initial decision.

#### Damage Proposal

14. The issue of damages was discussed at some length but not resolved.
-

#### **Hospital Records**

15. CP will get to the bottom of the issue of the destruction of hospital records and advise.

#### **HIV Secondarily Infected**

16. IW advised that any funding for secondarily infected HIV claimants will come out of the \$1.1 B offer.

#### **Limitation Periods**

17. The position of the federal government is now clear and set forth in writing. CP indicated that he anticipated getting the same agreement from all provincial governments. He and JJC are to exchange correspondence on that topic.
18. It was agreed that the waiver of limitation periods will not revitalize or restore any limitation periods that had expired.

#### **References from LCDC Studies**

19. IW will respond to the request by the claimants.

#### **Next Meeting**

20. The next meeting was set for June 30, 1998 in Ottawa.

#### **Negotiating Expenses**

21. IW advised that the negotiating expense budget of \$400,000 is to cover lawyers representing any claimant covered by the government's offer. JJC will respond.

#### **Press Relations**

22. JJC and IW are to confer regarding advising the press and advising claimants concerning the progress of the negotiations.



42

**CAMP CHURCH & ASSOCIATES**  
BARRISTERS

J.J. Camp, Q.C.\*  
David P. Church\*  
Joe Fiorante\*  
Andrew J. Pearson  
Sharon D. Matthews  
Ian G. Schildt

This is Exhibit "QQ" referred to in the  
affidavit of J.J. Camp  
made before me on AN 23 19 95  
A Commissioner for taking Affidavits  
For British Columbia

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FILE REF: 96015/001

June 4, 1998

Ivan G. Whitehall, Q.C.  
Chief General Counsel  
Department of Justice  
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Gignac, Sutts  
600 Westcourt Place, 251 Goyeau Street  
P.O. Box 670  
Windsor, Ontario N9A 6V4  
Attention: Harvey T. Strosberg, Q.C.

Pierre Lavigne  
Avocat  
440 Laurier Avenue, W., Suite 200  
Ottawa, Ontario K1R 7X6

Ministry of Attorney General  
Legal Services Branch  
1301 865 Hornby Street  
Vancouver BC V6Z 2H4  
Attention: D. Clifton Prowse

Dear Sirs:

**RE: HEPATITIS C NEGOTIATIONS**

I confirm my telephone conversation with each of you that the circumstances are such that an informal, not for attribution meeting can be conveniently arranged for noon, June 12, 1998 at the offices of the Upper Canada Law Society in Toronto.

Please keep the fact that we are meeting confidential for reasons that I can explain face-to-face.

The purpose of the meeting is to explore a resolution of the differences that have arisen in our negotiations to date. In my opinion, a meeting of this complement has a much better probability of succeeding than the more formal and much larger negotiating sessions to date.

Yours truly,

CAMP CHURCH & ASSOCIATES

By:

J.J. Camp

JJC:hp

SIWVS I

\* Denotes Law Corporation

43

# Hepatitis C survivors may be fewer than thought

## Compensation plan may be enough for all victims, advocates say

BY REBECCA BRAGG  
STAFF REPORTER

New data suggest that 12,000 to 20,000 people are still alive despite transfusions of hepatitis C-tainted blood from 1976 to 1992, experts say.

This estimate is dramatically lower than the number that has been suggested by the federal government.

The new figures mean that the \$1.1 billion earmarked by Ottawa for compensating people infected by blood transfusions during a limited period, 1988-90, might be enough to compensate all victims still living or likely to come forward, advocates say.

According to new epidemiological data, the most "plausible range" of Canadians infected with the virus, through all routes of transmission, is 210,000 to 275,000, said Dr. Richard Schabas, former chief medical officer of health for Ontario.

He was speaking to reporters yesterday after chairing a two-day closed-door meeting of federal and provincial health officials, epidemiologists, the Red Cross and victims' groups.

However, the number of people still alive after receiving hepatitis C-contaminated blood transfusions between 1960

and 1992 is much smaller, likely between 27,000 and 47,000, epidemiologist Dr. Robert Remis said.

Both Schabas and Remis refused to quote a revised estimate for the number of people infected from 1986 to 1990, dates that would make them eligible for government compensation, because the group had reached no consensus on that figure, they said.

**But** **Durham**  
**Wong-Rieger**, president of the Canadian Homophilla Society, and **Jeremy Beatty**, president of the Hepatitis C Society of Canada, both said it was 6,000 to 8,000.

**SCHARAS** In March, with a huge class-action lawsuit looming, federal Health Minister Allan Rock agreed to compensate the 22,000 people then estimated to have contracted the disease between 1986 and '89.

The revised estimates mean that the total number of victims likely to claim compensation should not exceed 22,000, Wong-Rieger stressed.

"We feel we've been vindicated in terms of the position we've always taken, which is that the numbers were too high," Besty said.

"This is a wonderful set of numbers," said Wong-Rieger. "From our perspective, it puts a very different picture on the compensation issue."

In Ottawa, officials in Rock's office said the new numbers will be forwarded to the working group of provincial and federal bureaucrats seeking consensus on a new national compensation package.

"It's new information the ministers will have to take into account," said Cyrus Reporter, Rock's executive assistant. He said it was too early to tell what effect the numbers will have on either the existing offer to victims infected 1985-86 or any of the outstanding class-action lawsuits.

But he said the offer to 1986-90 victims was "up to" \$1.1 billion and there was no firm commitment to spend the entire sum.

Wong-Rieger said a "reasonable" time range for eligibility for transfusion-related hepatitis C compensation would be 1976-92. If people infected before that have not yet become ill, then the virus has probably either disappeared from their systems or they won't get sick at all, she said.

**Principle should be compassion, not liability, blood victims say**

Rock's rationale for compensating only those infected between 1986 and '90 is that the government has no legal liability before or after that. A test to screen for the presence of the virus was available during that period but the Red Cross decided not to use it.

Blood victims and their advocates say the operative principle should be compassion, not legal liability.

Beatty proposes a compensation model based on need and the state of the disease. All people infected with hepatitis C through blood would receive a one-time lump sum, while those sick or disabled by the virus would receive ongoing financial support, he said.

Meanwhile, Ontario will remain with the federal-provincial working group, despite periodic threats to pull out and move alone to compensate victims infected before 1986.

Sources said Premier Mike Harris told victims in a meeting yesterday that he expects another meeting of health ministers next month.

If the matter is not resolved by the time the premiers meet in Saskatoon in August, Harris vowed to put it at the top of the agenda, sources said.

**With files from Tim Harper**

This is Exhibit - RR - referred to in the  
affidavit of J. J. Campbell

made before me on ~~Nov 23~~ 19 91...

A Commissioner for taking Affidavits  
For British Columbia

# Study alters hep C debate

Fewer people infected  
through tainted blood  
than originally thought

BY MARK KENNEDY

A new study has found that far fewer Canadians contracted hepatitis C from tainted blood than previously estimated.

And that new data may jeopardize negotiations under way involving the compensation offer governments made this spring to a limited number of victims infected with the disease between 1986 and 1990.

Still, the most recent scientific estimates — compiled by experts commissioned by the federal government and released yesterday — has provided new hope to groups pushing governments to compensate all victims.

Until now, governments estimated between 70,000 to 80,000 Canadians had caught the disease from bad blood in the last three decades and were still alive. But the new estimate is much lower — 26,400 to 31,300.

Victims were presented with the new figures at a meeting in Toronto.

Canadian Hemophilia Society president Durhane Wong-Rieger said the numbers confirmed her view that previous estimates were exaggerated and thereby caused undue fear about the cost of blanket compensation.

"This is infinitely affordable. We're not talking about busting the bank here," she said, adding victims' groups, armed with the new data, will step up efforts to lobby governments into reversing their positions on hepatitis C compensation.

However, a much thornier scenario looms that may see the governments' existing limited offer unravel.

In March, federal and provincial health ministers announced a \$1.1-billion compensation package for those who contracted hepatitis C between 1986 and 1990 — a key period in the tainted-blood scandal when governments chose not to buy a screening test that had been implemented in the United States.

When governments announced the package March 27, they estimated there are about 23,000 surviving Canadians who got the disease during that four-year period. Following the announcement, negotiations began between lawyers representing governments and 1986-90 victims who had already filed a class-action lawsuit. The purpose of the talks was to determine whether \$1.1 billion was enough, and, if so, how it would be distributed to victims.

But now those closed-door talks may be thrown into disarray because the new study estimates there are only 6,000 to 12,000 surviving victims who got hepatitis C between 1986 and 1990. That's much lower than the previous estimate used to calculate the \$1.1 billion offer.

Immediately yesterday the question was obvious: Had the governments offered more money to 1986-90 victims than was necessary?

Cyrus Reporter, senior aide to Health Minister Allan Rock, said late yesterday afternoon that government negotiators in the talks were never given a mandate to automatically offer the full \$1.1 billion.

"The offer was to spend up to \$1.1 billion," he said. "So this revised (estimate) will be an issue that the negotiators will have to take into account."

Toronto lawyer Doug Elliott, representing victims in the talks, warned the negotiations have already been difficult and would only get worse if government negotiators come back to the table with a smaller offer.

If that happens, Mr. Elliott said, lawyers will have to seriously review their options, which include walking away from the negotiations and proceeding with the lawsuit.

"If they lowered the amount would have to consider whether it was worthwhile," he said. "I always said we believe we have a strong (legal) case."

Meanwhile, the impact of the study on compensation is uncertain. Governments, with the recent election of Ontario and Quebec, have they don't want to compensate 1986 victims because they don't believe they were negligent before 1986.

Government policy has been based on the concern that to compete them now would set a dangerous precedent that would encourage victims of future medical misadventures to also demand compensation.

Victims' groups say they don't think that's the real reason health ministers were reluctant to compensate everyone. They believe health ministers were scared by a government estimate, calculated earlier this year, that 50,000 to 60,000 Canadians got hepatitis C before 1986 and are still alive.

The new study concludes 20,000 to 30,000 got the disease from 1981 to 1986. As well, between 400 and 500 got the disease between 1990 and 1995, a period in which imperfect screening tests were in place.

44

file

**CAMP CHURCH & ASSOCIATES**  
BARRISTERS

J.J. Camp, Q.C.\*  
David P. Church\*  
Joe Fiorante\*  
Andrew J. Pearson  
Sharon D. Matthews  
Ian G. Schildt

4th Floor, Randall Building  
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Canada V6B 1Z5

This is Exhibit SS referred to in the  
affidavit of JJCamp

made before me on May 23 1997

Commissioner for taking Affidavits  
For British Columbia

Telephone: (604) 689-7555

Facsimile: (604) 689-7554

FILE REF: 96015/001

June 22, 1998

VIA FAX

Ivan G. Whitehall, Q.C.  
Chief General Counsel  
Department of Justice  
Room 2341, 284 Wellington Street  
Ottawa, ON K1A 0H8

Ministry of Attorney General  
Legal Services Branch  
1301 865 Hornby Street  
Vancouver, BC V6Z 2H4  
Attention: D. Clifton Prowse

Dear Sirs:

**RE: HCV NEGOTIATIONS**

Enclosed is a proposal crafted on behalf of our coalition of lawyers acting for HCV claimants in the material time. The proposal is intended to get us to an agreement in principle, that is to say, it deals with the issues in general and lacks legal detail at this stage. It has not been provided to any lawyers representing hemophiliacs.

Please note that Option One reflects a proposal where the claimants would take the risk upon the settlement monies being paid to the Fund. Option Two reflects a proposal where the governments accept the risk of the settlement monies being insufficient.

**CAMP CHURCH & ASSOCIATES**

Please let us have your views as quickly as possible.

Yours truly,

**CAMP CHURCH & ASSOCIATES**

By:

J. L. Camp



JJC:lv  
Encl.

cc: Harvey Strosberg  
Pierre Lavigne



June 22, 1998  
Without Prejudice

OPTION ONE

CLASS PERIOD

1. January 1, 1986 to July 1, 1990 ("class period").

CLASS MEMBERS

2. All persons who were not intravenous non-prescription drug users who:
  - (a) only received blood or blood derivatives (except those set out in Schedule "A") in the class period and were infected with the hepatitis C virus by a positive antibody or PCR test; or
  - (b) received blood or blood derivatives (except those set out in Schedule "A") in the class period and outside the class period, and were infected with the hepatitis C virus as shown by a positive antibody or PCR test and on the balance of probabilities demonstrates that she or he was infected with HCV in the class period; or

- (c) were infected with HCV by a partner or parent who come within the description of persons in paragraphs 2(a) or 2(b) .

**CLASS MEMBERSHIP CLOSED**

3. No person may register as a class member after January 1, 2010, subject to any order of the courts to extend the registration period.

**SETTLEMENT MONIES**

4. The settlement monies ("Fund") will be paid and held in a manner to be agreed upon so that the interest on the Fund will not be subject to income tax and will be tax free as if invested by Her Majesty the Queen in Right of Canada ("Structure").

5. Advance rulings will be obtained from Revenue Canada that the Structure will result in the interest earned on the Fund not being subject to income tax and that all money received by the class members will not be subject to income tax.

**GENERAL DAMAGES**

6. The following grid will apply for the payment of general damages:

- (a) all class members who demonstrate antibody positivity will be paid \$5,000;
- (b) all class members who demonstrate PCR positivity will be paid a further \$15,000;
- (c) all class members who have undergone a liver biopsy and show a grade 3 inflammation or fibrotic stage 2 or stage 3 changes or who have met a protocol for interferon treatment will be paid a further \$15,000;
- (d) every class member who completes a month of interferon treatment (or its equivalent) shall be paid \$1,000 for each month of treatment to a maximum of \$12,000 payable at the completion of the treatment;
- (e) every class member demonstrating cirrhosis of the liver or porphyria cutanea tarda attributable to HCV shall be paid a further \$60,000; and
- (f) every class member demonstrating decompensation of the liver, liver cancer or other end stage diseases including debilitating or associated conditions such as thrombocytopenia (low platelets), B-cell lymphoma and mixed cryoglobulinemia shall be paid a further \$120,000.

7. Except for paragraph 6(d), if a class member qualifies at any stage, she or he is entitled to the payment(s) at all prior stages.

**ESTATES OF CLASS MEMBERS WHO DIED PRIOR TO THE ESTABLISHMENT OF THE FUND**

8. The sum of \$50,000 shall be paid to the estate of every class member who died prior to the establishment of the Fund and whose death was caused primarily by HCV.

**DEATH CLAIMS**

9. The spouse, common law spouse, partner, children, grandchildren, parents and grandparents of any person who would be a class member if alive but who has died or who dies primarily as a result of the HCV virus are entitled to recover from the Fund after assessment their pecuniary loss, the reasonable funeral costs not to exceed \$5,000 and an amount to compensate them for their loss of care, companionship and guidance. In assessing these damages, the referee shall take into account any payment(s) for loss of income from the Fund to the deceased class member.

**INFLATION**

10. All amounts recited in this option shall be adjusted annually by the increase in the C.P.I. from and after January 2, 2000.

**LOSS OF INCOME**

11. Each class member may assess her or his net wage loss. But, the amount assessed by the referee shall be the net wage loss calculated after deduction of UIC, CPP, sickness and accident, long term disability payments and every other commercial or governmental collateral benefit of any nature or kind. No subrogated claims will be paid from the Fund. In calculating net wage loss, the referees shall also make deductions for the income tax that would have been paid by the class member if the income had been earned.

**UNINSURED MEDICATION AND TREATMENT COSTS**

12. Each class member may recover the net uninsured costs paid by her or him for prescribed medication or treatment after deduction of payments from all benefits, programs, insurance payments and every other commercial or governmental collateral benefit of any nature or kind. No subrogation claims will be paid.

**CARE COSTS**

13. Each class member may recover the net uninsured costs of care paid by her or him after deduction of all grants, aid, benefits, insurance payments and every other governmental or commercial collateral benefit of every nature and kind. No subrogation claims will be paid.

**MISCELLANEOUS OUT-OF-POCKET EXPENSES**

14. Each class member may recover the net uninsured out-of-pocket expenses paid or incurred by her or him after deduction of all grants, aid, benefits, insurance payments and every other governmental or commercial collateral benefit of every nature and kind. No subrogation claims will be paid.

**PERIODIC ASSESSMENTS**

15. A class member's claims for general damages, loss of income, uninsured medication and treatment costs, care costs and miscellaneous out-of-pocket expenses may be assessed periodically but no more frequently than once every year.

**ADJUDICATION OF DISPUTES**

16. Special referees will be appointed across Canada and all assessments will be held before the special referees.

17. If any party to the assessment is not satisfied with the referee's report, the report may be appealed to a superior court in the province in which the reference was held or in which the class member resides.

18. The terms of the reference, the manner of appointment of referees and the referees' compensation are matters for further discussion if an agreement in principle is reached.

**END DATE**

19. The Fund will be wound up on or after July 1, 2020, subject to any order of the courts to extend the operation of the Fund.

**LIFE INSURANCE**

20. Any life insurance payments received by a class member or his or her family members shall not be considered for any purposes.

**NO RIGHT OF SUBROGATION**

21. No subrogation claims shall be paid out of the Fund.

**DISPOSITION OF RESIDUE IN THE FUND**

22. The residue of the Fund, if any, will be expended for the benefit of the class member as the courts shall direct.

**RISKS OF INSUFFICIENCY OF THE FUND**

23. The risk that the Fund may be insufficient to pay all claims in full shall be borne by the class members. The class members shall be advised that there is a risk that at some time in the future there may be insufficient funds available to pay any or all claims but claims shall be paid in full from the Fund on a first come, first serve basis until the courts order otherwise.

**COSTS AND DISBURSEMENTS RELATING TO THE REFERENCE**

24. The reasonable legal costs of a class member for any proceeding before a referee shall be in the discretion of the referee and payable out of the Fund. These costs may include the costs of a medical report, hospital records, travel costs to attend references and the reasonable cost of legal representation at and in relation to the reference.



**COSTS IN THE CLASS ACTIONS**

25. The costs of counsel in the class actions shall be fixed by the courts in British Columbia, Quebec and Ontario, and shall be paid out of the Fund.

**OPTION TWO**

Option two contains the same terms as Option One except for paragraphs 2(b) and 22 which read as follows:

2(b) received blood or blood derivatives in the class period and outside the class period, and were infected with the hepatitis C virus as shown by a positive antibody or PCR test;

22. The risk that the Fund may be insufficient to pay all claims in full shall be borne by the federal government and the federal government shall pay into the Fund any amount required to pay any unpaid claims in full.

45

**CAMP CHURCH & ASSOCIATES**  
**BARRISTERS**

J.J. Camp, Q.C.\*  
David P. Church\*  
Joe Fiorante\*  
Andrew J. Pearson  
Sharon D. Matthews  
Ian G. Schildt

This is Exhibit **TT** referred to in the  
affidavit of **J.J. Camp**  
made before me on **June 19 1998**  
.....  
A Commissioner for taking Affidavits  
for British Columbia

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**FAX COVER SHEET**

TO: Department of Justice  
ATTN: Ivan G. Whitehall, Q.C.

FAX NO.: (613) 952-8713  
LOCATION: Ottawa, ON

TO: Ministry of Attorney General,  
Legal Services  
ATTN: D. Clifton Prowse

FAX NO.: 660-2636  
LOCATION: Vancouver

FROM: J.J. Camp

DATE: June 25, 1998

NUMBER OF PAGES (INCLUDING COVER PAGE): 2

- ☒ Originals will NOT be sent  
☐ Originals will be sent under separate cover

MESSAGE:

**RE: HCV NEGOTIATIONS**

Attached is an Agenda for our June 30, 1998 negotiating meeting.

WE INTEND THIS FAX MESSAGE ONLY FOR THE PERSON OR ENTITY NAMED ABOVE. THIS MESSAGE MAY CONTAIN INFORMATION THAT IS PRIVILEGED, CONFIDENTIAL OR EXEMPT FROM DISCLOSURE UNDER APPLICABLE LAW. IF YOU ARE NOT THE ADDRESSEE OR AN EMPLOYEE OR AGENT RESPONSIBLE FOR DELIVERING THIS MESSAGE TO THE ADDRESSEE, PLEASE NOTIFY US IMMEDIATELY BY TELEPHONE AND RETURN THIS DOCUMENT TO US AT OUR EXPENSE AT THE ADDRESS NOTED ABOVE. ANY DISSEMINATION OR COPYING OF THIS MESSAGE BY ANYONE OTHER THAN THE ADDRESSEE IS STRICTLY PROHIBITED.

\* Denotes Law Corporation

## **AGENDA**

### **HEPATITIS C NEGOTIATIONS**

#### **JUNE 30, 1998 NEGOTIATING MEETING - OTTAWA, ONTARIO**

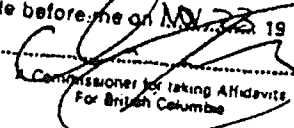
1. Points of Record from June 3, 1998 Negotiating Meeting
2. Report From Joint Committees
  - (i) Exigent Claims
  - (ii) Advertising and Notification - Questionnaire to B.C. Cohort
  - (iii) Disease Modelling
3. Damages - Plaintiffs' proposal for discussion
4. Hospital Records
5. New LCDC Study on Cohort Size
6. Press Relations - Press Release by LCDC
7. Next Meeting

46

# CAMP CHURCH & ASSOCIATES

J.J. Camp, Q.C.\*  
David P. Church\*  
Joe Fiorante\*  
Andrew J. Pearson  
Sharon D. Matthews  
Ian G. Schildt

FILE REF: 96015/001

BARRISTERS  
This is Exhibit uu referred to in the  
affidavit of J.J. Camp  
made before me on July 22 1997  
  
Commissioner for taking Affidavits  
For British Columbia

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July 3, 1998

## BY FAX

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N9A 6V4  
Attention: Harvey T. Strosberg, Q.C.  
Attention: Cliff Sutts

Elliott & Kim  
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Attention: Douglas Elliott

Docken & Company  
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Attention: Clint G. Docken, Q.C.

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Buchan Derrick & Ring  
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Attention: Dawna Ring

Kapoor, Selnes, Klimm & Brown  
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S0E 1A0  
Attention: Bill Selnes

Tinkler Morris  
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Attention: Philip S. Tinkler

Teplitsky, Colson  
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Attention: Harvin Pitch

CAMP CHURCH & ASSOCIATES

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Marchand, Magnan, Melançon, Forget  
Tour de la Banque Nationale  
600, de la Gauchetière Ouest  
Bureau 1640  
Montreal, Quebec H3B 4L8

Attention: Michel Savonitto  
Attention: Bertrand Paiement

Genest Murray DesBrisay Lamek  
#700 - 130 Adelaide West  
Toronto, Ontario  
M5H 4C1  
Attention: Paul Lamek, Q.C.

Grant Kovacs Norell  
930 - 1040 W. Georgia Street  
Vancouver, BC V6E 4H1  
Attention: Bruce Lemer

Dear Sirs/Mesdames:

**RE: HCV NEGOTIATIONS**

The meeting of June 30, 1998 was more eventful than I anticipated.

Enclosed is a copy of the Minutes of the meeting along with the Points of Record. I also enclose a copy of my letter of today's date to Ivan Whitehall and Clif Prowse.

We expressed our serious concerns pertaining to federal government press releases on cohort size and eligibility. I will be deliberating this issue further with Ivan Whitehall to try to prevent further contamination of the negotiations. I continue to thank you and respect you for taking the "high road" on this issue.

The governments tabled a recommendation they were prepared to make to their respective clients which is set forth in the Minutes and the Points of Record. For reasons I do not need to go into, some of the issues either need clarification or amplification. I will be addressing this in the next few days and responding to their counter-proposal. Our response was largely formulated at a post-negotiations meeting by our Negotiating Committee.

I spoke with both Ivan Whitehall and Clif Prowse after the June 30 meeting but they will not be in a position to respond until they get further instructions.

In my opinion, the counter-proposal made by the governments is deficient or unacceptable in some respects but it is getting closer.

The negotiating committee met with some of the lawyers for the hemophiliacs. In my opinion, it is unlikely that we will be able to agree to a joint proposal for our group and their group.

CAMP CHURCH & ASSOCIATES

In the meantime, we are working on a questionnaire to be distributed to the B.C. cohort. I anticipate that this process will take several weeks. Our primary purpose in eliciting this information is to generate harder evidence for our general damages grid and for economic loss. I will keep you closely abreast of developments.

Yours truly,

CAMP CHURCH & ASSOCIATES

By: 

J.J. Camp

JJC:hp  
Encls.



## HEPATITIS C NEGOTIATING MEETING

JUNE 30, 1998, OTTAWA

### Present:

J.J. Camp, Q.C. (JJC)  
Sharon Matthews  
Pierre Lavigne  
Dawna Ring  
Clifford Sutts  
Douglas Elliott  
David Neave  
Bonnie Tough  
Claude LaPointe  
Ivan Whitehall, Q.C. (IW)  
Clif Prowse (CP)  
Sandy Graham  
Catharine Moore  
Andre Lespérance  
Robert Monette  
Lisa Fudge  
Christine Henderson  
Micky Smith

JJC advised that the Federal Government press matters outside of the negotiations are contaminating the negotiations, particularly on the issue of eligibility.

The plaintiff's group have honoured our agreement not to go to the press to the letter and now feel that they are being treated unfairly.

IW responded that no one on his side of the negotiating table has spoken to the press and the reality is that the government is under pressure because of the post 90 and pre 86 infected persons. IW cautioned his client against addressing anything in public to do with the 86-90 group but he was told that anyone with a calculator would be able to figure it out and that is what happened.

IW tabled a counter-proposal by way of recommendation which he is prepared to put to his client. It has been discussed with the provincial counterparts but no one has any instructions. The recommendation is as follows:

1. there would be an initial payment on proving eligibility of \$5,000;

2. persons who have stage 3 fibrosis would receive a further \$30,000;
3. they are prepared to offer \$200,000 per month as general damages while a person undergoes Interferon or similar treatment. This amount includes all medication costs;
4. an additional \$65,000 at the cirrhosis stage;
5. an additional \$100,000 at the decompensation/liver cancer stage;
6. for estates and families they will offer a total of \$25,000;
7. for economic losses, they have adopted our approach of working on a net basis. Post-cirrhosis, they will pay 70% of net income loss based on our definition of net losses;
8. they propose a 3 year review for the purpose of upping the claim or adjusting it either way if treatment affects the claim;
9. they suggest an ADR process for administration of the claims;
10. they are not prepared to make an offer on costs of future care;
11. the governments will assume the risk for any overage or underage on the package;
12. there will be no right of subrogation;
13. they require releases.

The offer reflects their assessment on defending the actions but also the governments' willingness to settle the cases. If they were only assessing liability, the offer would be far lower.

With respect to eligibility, the claimant must prove that they got blood in the window period, and have a positive PCR and a positive antibody test. Once there is evidence of IV drug use, those persons will require a traceback. CP said that they have not considered eligibility in detail. JJC said that because of the matters raised in the press and statements by Drs. Gully and Remus, the spectre was raised that the government may require a traceback. That is not acceptable. IW said that once there is evidence of IV drug use then we will need a traceback to prove infection.

They propose an ADR process for the purposes of determining eligibility and quantum and that is a process which should be worked on over the summer.

IW said that Bonnie Tough, on behalf of the hemophiliacs, has made a proposal in draft form. He was not prepared to address the offer because they are still looking for a pan-Canadian solution. He would like a joint response from all plaintiffs if possible.

CP said he is still working on the issue of obtaining up to date information on interferon treatment. There was a short break while the governments caucused on the issue of what there offer on interferon pertains to.

IW advised that they are prepared to recommend \$2,000 per month in general damages while a person undergoes treatment.

J.J. Camp advised that we will respond to the offer as quickly as possible.

Lisa Fudge advised that the Shabus report is being released later this week and will be sent to all counsel. They will attempt to impose a press embargo until it has been received by all counsel.

With respect to exigent claims, JJC advised that if this offer proceeds rapidly, it will overtake exigent claims, but if it does not, they should be addressed.

CP advised that they are working more on the main claim and are hoping that exigent claims are overtaken.

IW said if this cannot be quickly settled we should work on exigent claims.

IW suggested the time and format of the next meeting be determined once there is a response to the government proposal. It will be left open but it is unlikely there can be another plenary meeting before September.

47

+4615

**CAMP CHURCH & ASSOCIATES**  
BARRISTERS

J.J. Camp, Q.C.\*  
David P. Church\*  
Joe Fiorante\*  
Andrew J. Pearson  
Sharon D. Matthews  
Ian G. Schildt

This is Exhibit "VV" referred to in the  
affidavit of J.J. Camp  
made before me on MAY 23 1998  
A Commissioner for taking Affidavits  
For British Columbia

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FILE REF: 96015/001

July 13, 1998

**BY FAX**

Gignac, Sutts  
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N9A 6V4  
Attention: Harvey T. Strosberg, Q.C.  
Attention: Cliff Sutts

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Attention: Dawna Ring

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Attention: Douglas Elliott

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Attention: Bill Selnes

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Attention: Philip S. Tinkler

Kenneth Arenson  
179 John's Street  
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Teplitsky, Colson  
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Attention: Harvin Pitch

SMYI

\* Denotes Law Corporation

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**Attention: Michel Savonitto**  
**Attention: Bertrand Paiement**

Genest Murray DesBrisay Lamek  
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**Attention: Paul Lamek, Q.C.**

Grant Kovacs Norell  
930 - 1040 W. Georgia Street  
Vancouver, BC V6E 4H1  
**Attention: Bruce Lemer**

Dear Sirs/Mesdames:

**RE: HCV NEGOTIATIONS**

Since the last negotiating meeting on June 30, 1998 at which the governments responded to our June 22, 1998 proposal, I have had several separate conversations with Ivan Whitehall and Clif Prowse. On July 9, 1998, I convened a conference call with Ivan Whitehall and Clif Prowse and conveyed the further counter proposal which was discussed by our negotiating committee. I attach a written version of our latest counter proposal along with my covering letter.

Our latest counter proposal was not received well but they did indicate that they would have their experts "cost it out". I do not anticipate a response before the end of the summer.

On Friday July 10, 1998, Bruce Lemer and Sharon Matthews appeared before the case management judge in *Endean*. Mr. Justice Smith approved the medical research survey with the caveat that only the number of class members necessary to make the study scientifically valid be contacted and that the cover letter which advises the sample that they may be contacted for the study not refer to the class action. In addition, Mr. Justice Smith ordered that the notice of the class members be delivered to persons in the provincial Ministry of Health database of infected British Columbians who were transfused during the class period. The opt out date is December 31, 1998. His Lordship also directed some changes be made to the form of the notice. We will provide you with a copy of the notice once it has been finalized.

CAMP CHURCH & ASSOCIATES

I will advise you of any further developments.

Yours truly,

CAMP CHURCH & ASSOCIATES

By: 

J.J. Camp

JJC.SDM

July 10, 1998

**WITHOUT PREJUDICE**

**Class Period**

1. January 1, 1986 to July 1, 1990 ("class period").

**Class Members**

2. All persons who:
  - (a) received blood or blood derivatives (except those set out in Schedule "A") in the class period and were infected with the Hepatitis C virus ("HCV") as evidenced by a positive antibody or PCR test except those persons the federal government or provincial and territorial governments prove were not infected by blood or blood derivatives during the class period; and
  - (b) all persons who were infected with HCV by a partner or parent who come within the description of persons in paragraph 2(a).
3. The method of proof of non-infection from blood or blood derivatives during the class period referred to in paragraph 2(a) shall be through a traceback procedure which indicates that the donors of blood or blood derivatives received by the



class member during the class period have not tested positive for the HCV antibody. The traceback procedure will take no longer than 6 months.

#### **Class Membership Closed**

4. No persons may register as a class member after January 1, 2010, subject to any order of the courts to extend the registration period.

#### **Income Tax**

5. The settlement monies ("Fund") will be paid and held in a manner to be agreed upon. An advance ruling will be obtained from Revenue Canada that all money received by class members will not be subject to income tax.

#### **General Damages**

6. The following grid will apply for the payment of general damages:
- (a) all class members who demonstrate antibody positivity will be paid \$5,000;
  - (b) all class members who demonstrate PCR positivity and who have undergone a liver biopsy and show fibrotic stage 2 changes or who have met a protocol for interferon treatment will be paid a further \$25,000;
  - (c) all class members who complete a month of interferon treatment (or its equivalent) shall be paid \$2,000 for each month of treatment;
  - (d) all class members who demonstrate cirrhosis of the liver or porphyria cutanea tarda attributable to HCV shall be paid a further \$65,000; and

- (e) all class members who demonstrate decompensation of the liver, liver cancer or other end stage diseases including debilitating or associated conditions such as thrombocytopenia (low platelets), B-cell lymphoma and mixed cryoglobulinemia shall be paid a further \$100,000.

7. Except for paragraph 6(c), if a class member qualifies at any stage, she or he is entitled to the payment(s) at all prior stages.

#### **Estate of Class Members Who Died Prior to the Establishment of the Fund**

8. The sum of \$25,000 shall be paid to the estate of all class members who died prior to the establishment of the Fund and whose death was caused primarily by HCV.

#### **Death Claims**

9. The spouse, common law spouse, partner, children, grandchildren, parents and grandparents of any person who would be a class member if alive but who has died or who dies primarily as a result of HCV are entitled to recover from the Fund after assessment their pecuniary loss, the reasonable funeral costs not to exceed \$5,000 and an amount to compensate them for their loss of care, companionship and guidance. In assessing these damages, the referee shall take into account any payment(s) for loss of income from the Fund to the deceased class member. In assessing pecuniary losses, the working life of the deceased shall be assumed to terminate at age 65.

### **Inflation**

10. All amounts recited in this option shall be adjusted annually by the increase in the C.P.I. from and after January 2, 2000.

### **Loss of Income**

11. All class members who have undergone a liver biopsy and who qualify for general damages under paragraphs 6(b), (c), (d) or (e) may assess her or his past, present and future net wage losses up to age 65 calculated after deduction of UIC, CPP sickness and accident, long term disability payments and every other commercial or governmental collateral benefit of any nature or kind. No subrogated claims will be paid from the Fund. In calculating net wage losses, the referees shall also make deductions for the income tax that would have been paid by the class member if the income had been earned.

### **Uninsured Medication and Treatment Costs**

12. Each class member may recover the net uninsured costs paid by her or him for prescribed medication or treatment after deduction of payments from all benefits, programs, insurance payments and every other commercial or governmental collateral benefit of any nature or kind. No subrogated claims will be paid from the Fund.

### **Care Costs**

13. Each class member may recover the net uninsured costs of care paid by her or him after deduction of all grants, aid, benefits, insurance payments and every other governmental or commercial collateral benefit of every nature and kind. No subrogation claims will be paid from the Fund.

### **Miscellaneous Out-Of-Pocket Expenses**

14. Each class member may recover the net uninsured out-of-pocket expenses paid or incurred by her or him after deduction of all grants, aid, benefits, insurance payments and every other governmental or commercial collateral benefit of every nature and kind. No subrogation claims will be paid from the Fund.

### **Periodic Assessments**

15. A class member's claim for general damages, loss of income, uninsured medication and treatment costs, care costs and miscellaneous out-of-pocket expenses may be assessed periodically but no more frequently than once every three years.

### **Adjudication of Disputes**

16. Special referees will be appointed across Canada and all assessments will be held before the special referees.

17. If any party to the assessment is not satisfied with the referee's report, the report may be appealed to a superior court in the province in which the reference was held or in which the class member resides.

18. The terms of the reference, the manner of appointment of referees and the referees' compensation are matters for further discussion if an agreement in principle is reached.

#### **End Date**

19. The Fund will be wound up on or after July 1, 2020, subject to any order of the courts to extend the operation of the Fund.

#### **Life Insurance**

20. Any life insurance payments received by a class member or his or her family members shall not be considered for any purposes.

#### **No Right of Subrogation**

21. No subrogation claims shall be paid out of the Fund.

#### **Risk of Insufficiency in the Fund**

22. The federal government shall guarantee all amounts required to pay claims in full.

### **Costs and Disbursements Relating to the Reference**

23. The reasonable legal costs of a class member for any proceeding before a referee shall be in the discretion of the referee and payable out of the Fund. These costs may include the costs of a medical report, hospital records, travel costs to attend references and the reasonable costs of legal representation at and in relation to the reference.

### **Costs in the Class Actions**

24. The costs of counsel in the class actions shall be fixed by the courts in British Columbia, Quebec and Ontario, and shall be paid out of the Fund.

48

# CAMP CHURCH & ASSOCIATES

## BARRISTERS

J.J. Camp, Q.C.\*  
David P. Church\*  
Joe Fiorante\*  
Andrew J. Pearson  
Sharon D. Matthews  
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This is Exhibit "WW" referred to in the  
affidavit of JJCAMP  
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FILE REF: 96015/001

August 21, 1998

BY FAX

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Attention: Harvey T. Strosberg, Q.C.  
Attention: Cliff Sutts

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Attention: Dawna Ring

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Attention: Paul Lamek, Q.C.

Grant Kovacs Norell  
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Vancouver, BC V6E 4H1  
Attention: Bruce Lemer

Dear Sirs/Mesdames:

**RE: HCV NEGOTIATIONS**

Ivan Whitehall returned from holidays earlier this week and I have just concluded a conference call with him and Clif Prowse.

Ivan will be meeting with his economists next week who have been costing out our latest counteroffer. He will be conferring with the provincial representatives thereafter. He has promised to confer with me after that.

He is counsel on the APEC hearings which commence in Vancouver during the second week of September, 1998 and will be here for at least a few weeks after that. He proposes that we have a further negotiating meeting during the week of September 21, 1998 in Vancouver. For my part, I indicated that we made much better progress with the smaller negotiating session with him, Prowse, Lavigne, Strosberg and myself. He is agreeable to that as is Prowse. Unless I hear strong objections to the contrary, I will proceed along these lines.

None of us raised the CCAA matters and it is my intention to keep it that way if possible. Similarly, I indicated that I am operating on the assumption that our negotiations can proceed independently of the pre-1986 and post-1990 HCV claims. They agreed.

CAMP CHURCH & ASSOCIATES

Incidentally, both Prowse and Whitehall indicated that there was no damage done by our latest counteroffer having to be corrected by me.

I will keep you closely abreast of developments.

Yours truly,

CAMP CHURCH & ASSOCIATES

By:

JJ Camp

JJC:hp

xxxxxx

49

# CAMP CHURCH & ASSOCIATES

## BARRISTERS

J.J. Camp, Q.C.\*  
David P. Church\*  
Joe Fiorante\*  
Andrew J. Pearson  
Sharon D. Matthews  
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This is Exhibit "XX" referred to in the  
affidavit of JJ Camp  
made before me on Nov. 23 19 98  
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FILE REF: 96015/001

September 11, 1998

BY FAX

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Attention: Cliff Sutts

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Attention: Dawna Ring

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## CAMP CHURCH & ASSOCIATES

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Attention: Michel Savonitto  
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Attention: Paul Lamek, Q.C.

Grant Kovacs Norell  
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Vancouver, BC V6E 4H1  
Attention: Bruce Lemer

Dear Sirs/Mesdames:

### RE: HCV NEGOTIATIONS

I had a private meeting with Ivan Whitehall and Clif Prowse on September 10, 1999.

Attached is a copy of a very rough and ready analysis which I prepared for our meeting and which I reviewed with Ivan Whitehall and Clif Prowse.

The governments have retained KPMG to do a cost analysis of our last offer. The long and short of the analysis is that our last offer, as costed by KPMG, came in at \$1.6 billion. The other side gave me some but not all of the parameters used in the costing analysis. I indicated that our own analysis brought our offer in at less than \$1.1 billion and that we would need to study the KPMG analysis to make any sense of it. Based on the KPMG analysis, Ivan Whitehall was prepared to recommend a further counteroffer which, in my opinion, would not have been helpful and would probably be seen as taking a step backwards instead of getting us closer together.

## CAMP CHURCH & ASSOCIATES

In my opinion, the best way to proceed at this time is to get the best evidence, as quickly as possible, as to cohort size, a profile of the cohort and modeling for the future. This can best be accomplished, in my further opinion, by identifying the true size of the BC cohort and surveying the entire BC cohort. I believe (and I underscore the word believe) that I have persuaded Ivan Whitehall and Clif Prowse to agree to this approach. Our Notice to Class Members is being sent out by the BC Government on September 11, 1998 and I anticipate that we will know within two weeks as to the true size of the BC cohort. As you know, the BC cohort is probably the best defined in Canada because of the government notification program in 1997 and early 1998. Once we have the cohort sized, I believe the government will permit us to use their socio-economic profile material and have it sent to all of the BC cohort with a view to identifying the profile of the cohort. This will then leave modeling. The governments have been using the "Bennett" model which they advise is "state of the art". I am not aware of the Bennett model but they have promised to provide it to me. Once this is all in place, the governments have tentatively agreed to use KPMG and whatever costing consultants we may want to use to extrapolate this information across Canada and cost out various settlement proposals to resolve the 1986-1990 class actions within the \$1.1 billion offer.

In light of these developments I do not think it would be profitable to have a further negotiating meeting (small or large) until the BC cohort size and profile has been identified.

## CAMP CHURCH & ASSOCIATES

Ivan Whitehall is in Vancouver for the next several weeks on the APEC hearings. He indicates that he is genuinely interested in resolving this case in a timely way. Clif Prowse says much the same.

Incidentally, I have learned from a reliable source that the primary government defence is predicated on the policy doctrine emanating from the Supreme Court of Canada cases, *Barratt, Just, Brown and Swinamer*. This will come as absolutely no surprise to anyone. I have commissioned legal research in response to this issue which I will share with you once it has been concluded.

I have also been advised that the governments are expecting offer from the hemophiliacs. The additional source of funding for the hemophiliacs alluded to by Ivan Whitehall in one of our recent conversations, is from the manufacturers of the blood products used by hemophiliacs. I am not aware of how large this additional funding may be.

**CAMP CHURCH & ASSOCIATES**

In the meantime, I propose that we have a conference call to reflect on these matters.

I will arrange the call for next week.

Yours truly,

**CAMP CHURCH & ASSOCIATES**

By:

J.J. Camp

JJC:hp



50

# CAMP CHURCH & ASSOCIATES

## BARRISTERS

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FILE REF: 96015/001

This is Exhibit YY referred to in the  
affidavit of J.J. Camp  
made before me on 12th 23 99.

A Commissioner for taking Affidavits  
For British Columbia

September 18, 1998

VIA FAX NO. (613) 952-8713

Ivan G. Whitehall, Q.C.  
Chief General Counsel  
Department of Justice  
Room 2341, 284 Wellington Street  
Ottawa, Ontario K1A 0H8

Dear Sir:

### Re: HCV Negotiations

I refer to our recent discussions and wish to address the following matters:

#### 1. Disease Modeling

You have referred to the Bennett model. I have not been able to turn up such a model. I understand that you will provide me with a copy of this model. I would appreciate receiving this as quickly as possible.

#### 2. KPMG Assumptions

You have costed our last counteroffer at \$1.6 billion or greater on the basis of advice from KPMG. My costing analysis done in conjunction with an independent accountant shows that our last counteroffer falls well within the \$1.1 billion envelope. We have agreed that we should have our respective consultants confer. We need to identify the assumptions and parameters which create such a vast difference in our costing analysis. We will be able to better crystalize the assumptions and parameters after the size and profile of the BC cohort has been identified. I suggest that we move forward as quickly as possible on this front.

#### 3. Survey of the BC Cohort

I was advised on September 17, 1998 that we had been given a "green light" by the British Columbia government to proceed with a survey of the cohort of people who had registered with our firm. In order to have this survey conducted as independently and objectively as

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\* Denotes Law Corporation

## CAMP CHURCH & ASSOCIATES

possible, I am quite content with having the survey conducted by the professionals who were to be retained by LCDC and the British Columbia government. I am operating on the assumption that the costs of this survey will come out of the \$1.1 billion offer. Please advise me if you differ. Again, time is of the essence. We have been discussing this survey since June and it has been delayed through no fault of the claimants. I understand that you fully support this survey and that you are keen on seeing it undertaken expeditiously. I am copying this letter to Clif Prowse and I will be conferring directly with him on this subject.

### 4. Exigent Claims

Your letter of September 14, 1998 was very helpful in resurrecting this issue. We are prepared to move very swiftly and I anticipate having a draft proposal to you and Clif Prowse early next week. Needless to say, the plight of those claimants who would be entitled to the exigent relief has only worsened with the passage of time. I believe it is incumbent upon us to move with the utmost of dispatch on this issue and I assure you that on behalf of the claimants, we will do everything we possibly can to resolve this issue as fast as possible.

### 5. Timing

It is my opinion that we should set a reasonable deadline to resolve this matter or at least determine if we are "coming together or coming apart". We have been negotiating for approximately six months. The lost opportunity costs alone reach eight figures in short order. There is a growing crescendo from our claimants to get the job done. We have a trial date in British Columbia which is only 15 months off. I suggest that we target mid October as a reasonable date to determine if we have a reasonable prospect of settling this matter.

I cannot leave this letter without expressing my appreciation to both you and Clif Prowse for your candor and the good faith you have exhibited in these negotiations to date.

Yours truly,

CAMP CHURCH & ASSOCIATES

By:

J.J. Camp

JJC:hp  
cc: Clif Prowse

51

# CAMP CHURCH & ASSOCIATES

This is Exhibit **BARRISTERS**  
**ZZ** referred to in the  
affidavit of **J. Camp**  
made before me on **NOV 23 19 99**  
*[Signature]*  
A Commissioner for taking Affidavits  
For British Columbia

J.J. Camp, Q.C.\*  
David P. Church\*  
Joe Fiorante\*  
Andrew J. Pearson  
Sharon D. Matthews  
Ian G. Schildt

4th Floor, Randall Building  
555 West Georgia Street  
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Telephone: (604) 689-7555

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FILE REF: 96015/001

September 21, 1998

VIA FAX NO. (613) 952-8713

VIA FAX NO. 660-2636

Ivan G. Whitehall, Q.C.  
Chief General Counsel  
Department of Justice  
Room 2341, 284 Wellington Street  
Ottawa, Ontario  
K1A 0H8

Ministry of Attorney General  
Legal Services Branch  
1301 865 Hornby Street  
Vancouver BC  
V6Z 2H4

Attention: D. Clifton Prowse

Dear Sirs:

Re: HCV Negotiations -  
Hepatitis C Emergency Program

Attached is a revised proposal for the Hepatitis C Emergency Program. It is modeled after the program proposed in June, 1998 but we have modified financial urgency to exist only when the claimant is entirely and continuously incapable of engaging in any occupation or employment for which the claimant is reasonably suited.

It also strikes me that we should consider having a category for the family and dependents of those persons who can prove financial distress up to \$25,000 based on the death of a breadwinner due primarily to the effects of the infection by Hepatitis C.

I also wish to make it plain that only one sum of \$25,000 would be paid per claimant.

I personally question the need for an end date of March 31, 1999, but I assume wiser persons than me have good and valid reasons for such an end date.

You will see that we have accommodated the suggestion that initial processing be done by a government employee. I assume the governments will be responsible for the wages, etc. for this employee. With respect to any appeals, we will contact ADR Chambers but I have every reason to believe they are still interested in participating even on a limited appeal basis.

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## CAMP CHURCH & ASSOCIATES

Given the much more limited numbers of the 1986-1990 cohort, I express the further personal opinion that the number of persons successfully claiming under this emergency program would be measured in scores and not hundreds. I see absolutely no risk of overpayment given the plan as proposed.

It goes without saying that it is incumbent upon all of us to show compassion and quickly address the needs of these persons who would be entitled to claim. I see no reason why this plan could not be implemented by November 1, 1998 and money could then be in the hands of claimants by Christmas. I ask you to give this your highest priority.

Yours truly,

CAMP CHURCH & ASSOCIATES

By:

J. J. Camp

JJC:hp

**REVISED PROPOSAL FOR HEPATITIS C EMERGENCY PROGRAM  
("HEPCEP")**

**Scope of the Hepcep**

1. All persons infected through blood or blood products with the Hepatitis C virus ("HCV") from January 1, 1986 through July 1, 1990 are entitled to apply for relief under the HepCEP. All claimants must establish Medical or Financial Urgency as defined to obtain relief under the HepCEP.

**Establishment of Qualification**

2. To qualify for relief under the HepCEP a claimant must provide:
  - (a)
    - i. receipt of blood or blood products from January 1, 1986 through July 1, 1990; or
    - ii. for hemophiliacs, a treating physician's letter confirming that the applicant is a hemophiliac and assertions by both physician and applicant that the applicant received blood or blood products between January 1, 1986 and June 30, 1990; or
    - iii. in cases where medical records are unavailable for whatever reason the claimant must document his or her unsuccessful attempts to obtain medical records and provide either:
      - a. a treating physician's written confirmation that, given the nature of the procedure in question, it is a reasonable inference that the applicant was transfused; or
      - b. the surgeon's written confirmation that a transfusion was administered;
  - and
  - (b) a positive test for Hepatitis C antibodies;
  - and
  - (c) a written declaration that the claimant has not used intravenous drugs, confirmed by a treating physician's letter confirming that to the best of their knowledge the claimant has no history of intravenous drug use.

**Relief**

3. Claimants who satisfy the above qualifications and satisfy the further criteria of either Medical Urgency or Financial Urgency as defined below will receive a lump sum payment of \$25,000 as an advance on their final claim.

#### **Medical Urgency**

4. Medical Urgency is defined as follows:

- (a) Thrombocytopenia which has not responded to treatment with prednisone after one month;
- (b) Porphyria Cutanea Tarda which has not responded to interferon or other treatment options after eight months;
- (c) Mixed Cryoglobulinemia;
- (d) Protein Malnutrition;
- (e) Fatigue Mental Changes when associated with cirrhosis;
- (f) Circulatory and Pulmonary Changes;
- (g) Hepatic Encephelopathy;
- (h) Ascites and Leg Oedema;
- (i) Portal hypertension;
- (j) Liver cell cancer;
- (k) Liver failure requiring transplantation;
- (l) Liver failure where liver transplantation is precluded.

The medical condition of the claimant must be confirmed by the opinion in writing of a treating physician.

#### **Financial Urgency**

5. Financial Urgency is defined as follows:

A medical condition related to Hepatitis C that renders the claimant entirely and continuously incapable of engaging for wages or profit in any occupation or employment for which the claimant is reasonably suited having regard to his or her skill, education, training or experience.

#### **Payments are Advances**

6. All payments are advances against the claimant's final settlement or judgment and are fully deductible from any settlement or judgment paid to the claimant. A partial release will be provided.

#### **Proof of Claims**

7. In order to limit the administrative costs of the HepCEP, all proof will be by a written application to be agreed upon by the parties with appropriate supporting documentation.



#### Adjudication of Claims

8. All applications are to be initially processed by a qualified and trained government employee. In the event an application is declined, the claimant has the right to appeal to ADR Chambers for independent review based on the same written application.

#### Duration of Programme

9. The programme will commence on November 1, 1998 and applications would be entertained until its close on March 31, 1999.

#### Legal Fees

10. Plaintiffs' counsel will defer legal fees on claims paid under the HepCEP to the conclusion of the individual settlement or judgment.

#### Without Prejudice

11. All claims processed, paid or rejected under the HepCEP are "without prejudice" to the plaintiffs' and the defendants' rights in the litigation and in the negotiations, i.e. as to liability as well as to each individual's claim with respect to qualification for compensation generally.

#### No Adverse Impact

12. All payments would be tax free. Governments agree that receipt of this assistance would not impact on entitlement to other government assistance programs such as Pharmacare, welfare, CPP benefits. Governments and their agents shall be authorized to utilize the personal information disclosed in the application forms and documentation required to be provided under the programme in order to develop non-personally identifiable statistical information. Subject to this limited use for those limited purposes no application would be intended to waive or otherwise affect the recipient's rights under any Federal or Provincial Freedom of Information and Protection of Privacy Acts.

52

**CAMP CHURCH & ASSOCIATES**  
BARRISTERS

J.J. Camp, Q.C.\*  
David P. Church\*  
Joe Fiorante\*  
Andrew J. Pearson  
Sharon D. Matthews  
Ian G. Schildt

This is Exhibit "AAA" referred to in the  
affidavit of J.J. Camp  
made before me on NOV. 23, 1998

A Commissioner for taking Affidavits  
For British Columbia

4th Floor, Randall Building  
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FILE REF: 96015/001

October 20, 1998

VIA FAX NO. 666-2214

VIA FAX NO. 660-2636

Ivan G. Whitehall, Q.C.  
Chief General Counsel  
Department of Justice  
Room 2341, 284 Wellington Street  
Ottawa, ON K1A 0H8

Ministry of Attorney General  
Legal Services Branch  
1301 865 Hornby Street  
Vancouver BC V6Z 2H4

Attention: D. Clifton Prowse

Dear Sirs:

**Re: HCV Negotiations**

I have conferred with the coalition of lawyers represented by me and I am instructed to work towards developing a joint model of HCV disease progression. I understand that Sharon Matthews conferred with Christine Henderson and Catharine Moore, to whom I am copying this letter, to involve the Canadian Association for the Study of Liver ("CASL"). Unfortunately, Dr. Sherman, upon whom we were relying for an introduction, had departed for Europe. An introduction to CASL was therefore sought from Dr. Anderson who is also a member of CASL and well known to that association. Dr. Anderson spoke to Dr. Lee, the head of CASL, and was advised that Dr. Lee is agreeable to pursuing the idea of CASL becoming involved in modeling on behalf of all of the parties. Dr. Lee indicated that he wished to raise the matter with the CASL executive and will do so at the next meeting. Dr. Anderson and Dr. Lee commented that although CASL members would have input into the model, none of them have experience in modeling.

As I mentioned at our last meeting, Dr. Roland Dickson of the Mayo Clinic is one of the leading disease modelers, if not the leading disease modeler, in the U.S. I have not spoken with Dr. Dickson but I asked Dr. Anderson to confer with him. The earliest that Dr. Dickson can meet to discuss modeling would be in early December. Dr. Dickson is a gastroenterologist with special training in hepatology and has experience developing models to predict outcomes in liver diseases. He has received funding from the National Institute of Health in the U.S. to conduct modeling pertaining to Hepatitis C. He is a member of the Division of Gastroenterology and Hepatology at the Mayo Clinic and I enclose a copy of the home page of this Division which also provides a link to some of the models which Dr. Dickson has developed. It appears to me

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CAMP CHURCH & ASSOCIATES

that he would be the ideal person to consult with CASL to provide us with a model. May I please have your views as quickly as possible.

I also take this opportunity to address a concern that you have mentioned from time to time concerning the fact that Dr. Anderson is not a hepatologist. This has caused me some consternation. I have taken the time to confer with the Royal College of Physicians and Surgeons of Canada and, as I suspected, they have confirmed that there is no formally recognized speciality of hepatology. I attach a copy of the list of clinical specialities, etc., granted or recognized by the Royal College. You will see that hepatology is not included. I am advised by the Royal College and by others that in Canada the phrase "hepatologist" is a self-styled reference used by gastroenterologists who have undergone special training in the study of liver or whose practices includes considerable experience with diseases of the liver. In both these regards, Dr. Anderson would clearly qualify as a hepatologist. I enclose a copy of his curriculum vitae and you will see that he completed a fellowship in hepatology at the Royal Free Hospital, London, England, studying under Dame Sheila Sherlock, one of the most respected and renowned gastroenterologists/hepatologists in the world. So far as I am aware, the only other doctor in Canada who completed a fellowship in hepatology studying under Dame Sheila Sherlock is Dr Jennie Heathcote. I also remind you that Dr. Anderson treats by far the largest cohort of hepatitis C patients in British Columbia. He has approximately 800 HCV patients. You will also see that the last few papers authored or co-authored by Dr. Anderson have concentrated on Hepatitis C and these articles have been published in peer review journals.

I can assure you that Dr. Anderson does not see himself as ensconced in the plaintiffs' camp in any way, shape or form. It is his strong preference that he be considered independent and objective and this is the way that we have dealt with him to date and will deal with him in the future. For example, so far as I am aware, Dr. Anderson has never appeared as an expert witness in any HCV related lawsuit.

I thought it best to deliberate these matters with you to hopefully put at rest the notion that Dr. Anderson is not qualified as a hepatologist and that he is a "hired gun" for the claimants.

Yours truly,

CAMP CHURCH & ASSOCIATES

By:

J.J. Camp

JJC:hp

cc: see attached

**CAMP CHURCH & ASSOCIATES**

cc: Catharine Moore  
Via Fax No. (613) 952-8713

Christine Henderson  
Via Fax No. (416) 327-8605

# CAMP CHURCH & ASSOCIATES

BARRISTERS

J.J. Camp, Q.C.\*  
David P. Church\*  
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FILE REF: 96015/001

October 30, 1998

VIA FAX NO. (403) 270-0995

Dr. Samuel Lee  
President of the Canadian Association for the Study of Liver  
3330 Hospital Drive N.W.  
Calgary, AB  
T2N 4N1

Dear Dr. Lee:

## Re: HCV Negotiations

I write on behalf of the Hepatitis C claimants, the federal government of Canada and the provincial governments of Canada in seeking the assistance of CASL to resolve one of the critical items in our negotiations. Let me provide some brief background facts. The HCV claimants who may be entitled to participate in any settlement were transfused between January 1, 1986 and July 1, 1990. The federal and provincial governments have offered up to \$1.1 billion to compensate this class of claimants, including hemophiliacs, secondarily infected HCV claimants and a very small class of HIV secondarily infected claimants. As you well know, the HCV disease process can be cleared or it can proceed from the acute phase to the chronic phase. Once chronic, various levels of inflammation and stages of fibrosis may ensue. There are many variables which may influence the disease outcome which include histological, biochemical or pathological signs and a variety of symptoms. As you also know, there is a growing body of literature pertaining to the predictive indicators of HCV disease outcome.

The federal and provincial governments have presented for the consideration of the claimants the Markov simulation which was relied upon by Dr. Bennett and others in a November 15, 1997 Annals of Internal Medicine Article, "Estimates of the Cost-Effectiveness of a Single Course of Interferon- $\alpha$ 2b in Patients With Histologically Mild Chronic hepatitis C". For our part, we have been relying on a rudimentary form of modeling fashioned by Dr. Frank Anderson, a CASL member. Both of these attempts to model the disease outcome for HCV have been the

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\* Denores Law Corporation

## CAMP CHURCH & ASSOCIATES

subject of constructive criticism. All parties view CASL as an independent and objective body to either construct the best possible model or to engage others to construct such a model and then offer the assessment of CASL on its viability and reliability. In the event that CASL wishes to retain persons who are competent in the field of disease modeling, CASL would have a free hand in proposing and retaining such persons subject only to budgetary approval. The names of two modelers have been raised by the parties, although none of the parties have spoken directly to these people. The first is Dr. Roland Dickson of the Mayo Clinic. As you may know, he has had extensive disease modeling experience, including a recent grant from the National Institute for Health for modeling liver disease. The second is Dr. Wong, one of the co-authors with Dr. Bennett of the article mentioned earlier in this paragraph.

It does bear repetition, however, that all parties are interested in getting the best possible HCV disease model sanctioned by CASL, which organization we all consider to be independent, objective and neutral with respect to the underlying litigation. In this respect, I speak on behalf of all parties in assuring CASL that they run no risk of attracting any legal liability in undertaking this venture for us. On the assumption that CASL is prepared to undertake this task, we would appreciate receiving a proposed budget from you pertaining to the associated costs and expenses. I do wish to emphasize, however, that time is very much of the essence. All parties are very anxious to have the proposed model as quickly as possible and, in this respect, we propose having a conference call with you once you have received and digested the contents of this letter. The parties are conferring in Ottawa commencing Monday, November 9, 1998 and it would be very helpful if we could coordinate a conference call with you prior to that meeting.

Let me address briefly the elements of the model and what we hope will be the outcome of the model. We anticipate that the model would be in a tree form with both probabilities and timing pertaining to the various stages and outcomes of the HCV disease process. For example, we are anxious to know the best available answers to the following kinds of questions:

1. of the persons who contract HCV, how many clear the virus?
2. of the persons who do not clear the virus, how many proceed to chronic HCV?
3. of chronic HCV patients, how many patients and over what period of time will these patients proceed through the various levels of inflammation and stages of fibrosis?
4. how many patients will proceed through cirrhosis to decompensation and end stage disease and over what period of time?
5. how many patients will die primarily from HCV?
6. how many patients will end up in a form of remission and for how long?

Needless to say, these questions are not exclusive and are recited merely to give an indication of the areas of interest to us to assist us in resolving the compensation issues.

## CAMP CHURCH & ASSOCIATES

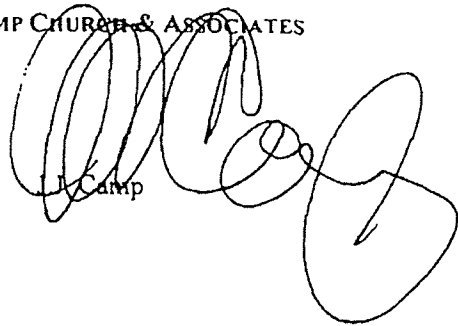
All parties are aware that HCV is a relatively new disease and is not yet fully understood. This necessarily means that there will be uncertainties with respect to any model that is proposed. We also are aware that the medical literature is based on studies from tertiary referral centres which may not reflect the cohort of HCV claimants in Canada, the vast majority of whom have not been referred to tertiary referral centres. It may be that CASL, or modelers retained by CASL, may suggest that the model will have to be considered preliminary and be validated over time.

May we please hear from you as quickly as possible.

Yours truly,

CAMP CHURCH & ASSOCIATES

By:

A large, stylized handwritten signature in black ink, appearing to be "J. J. Camp", written over the printed name "J. J. Camp".

JJC:hp

cc: Ivan Whitehall, Federal Government  
Clif Prowse, Provincial Government



53

OCT. 15. 1998 6:24PM JUSTICE CANADA

NO. 388 P.2



Department of Justice  
Canada

Ministère de la Justice  
Canada

Room 2341, East Memorial Bldg.  
284 Wellington Street  
Ottawa, Canada  
K1A 0H8

Telephone: 613-957-4801  
Facsimile: 613-952-8713

This is Exhibit "BBB" referred to in the  
affidavit of J.J. Camp  
made before me on NOV 23 1998

A Commissioner for taking Affidavits  
For British Columbia

October 15, 1998

BY FAX

Mr. J.J. Camp  
Camp, Church and Associates  
4<sup>th</sup> Floor, Randall Building  
555 Georgia Street West  
VANCOUVER, BRITISH COLUMBIA  
V6B 1Z5

Dear Mr. Camp:

Re: Hepatitis C Negotiations  
Our File No: 345006

Thank you for meeting with us today.

We are writing to confirm that you will explore the idea of the Plaintiffs taking the risk of the \$1.1 Billion envelope will be insufficient.

We also confirm that you will be advising when you are prepared for us to jointly approach the Canadian Association for the Study of the Liver to assist us with developing a medical model that we can both accept.

We are also awaiting any refinements you would be prepared to make to your offer, in particular, you indicated that more definition would be added to the parameters for economic loss and care costs.

OCT. 15. 1998

6:25PM

JUSTICE CANADA

NO. 388

P. 3

- 2 -

Finally, we would also appreciate if you could advise as to when you intend to bring your motion to lift the stay of proceedings against the Red Cross in *Endean*.

Yours very truly,



I. G. Whitehall, Q.C.  
Chief General Counsel

c.c. Clifton Prowse  
Pierre Lavigne  
Michel Savonnito

54

**CAMP CHURCH & ASSOCIATES**  
BARRISTERS

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This is Exhibit "CCC" referred to in the  
affidavit of J.J. Camp  
made before me on April 23, 1999.

Commissioner for taking Affidavits  
for British Columbia

FILE REF: 96015/001

October 23, 1998

**BY FAX**

Gignac, Sutts  
600 Westcourt Place, 251 Goyeau Street  
P.O. Box 670  
Windsor, Ontario  
N9A 6V4  
Attention: Harvey T. Strosberg, Q.C.  
Attention: Cliff Sutts

Buchan Derrick & Ring  
#100 - 5525 Artillery Place  
Halifax, Nova Scotia  
B3J 1J2  
Attention: Dawna Ring

Elliott & Kim  
#304 - 150 York Street  
Toronto, Ontario  
M5H 3S5  
Attention: Douglas Elliott

Kapoor, Selnes, Klimm & Brown  
P.O. Box 2200  
Melfort, Saskatchewan  
S0E 1A0  
Attention: Bill Selnes

Docken & Company  
215 Atrium II  
#840 - 6th Avenue South West  
Calgary, Alberta  
T2P 3E5  
Attention: Clint G. Docken, Q.C.

Tinkler Morris  
#304 - 150 York Street  
Toronto, Ontario  
M5H 3S5  
Attention: Philip S. Tinkler

Kenneth Arenson  
179 John's Street  
Toronto, Ontario  
M5T 1X4

Teplitsky, Colson  
#200 - 70 Bond Street  
Toronto, Ontario  
M5B 1X3  
Attention: Harvin Pitch

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\* Denotes Law Corporation

## CAMP CHURCH & ASSOCIATES

Genest Murray DesBrisay Lamek  
#700 - 130 Adelaide West  
Toronto, Ontario  
M5H 4C1  
Attention: Paul Lamek, Q.C.

Grant Kovacs Norell  
930 - 1040 W. Georgia Street  
Vancouver, BC V6E 4H1  
Attention: Bruce Lemer

Dear Sirs/Mesdames:

### RE: HCV NEGOTIATIONS

The primary purpose for writing this letter is to alert you to a new settlement concept and to discuss and propose modifications to our last offer.

Let me do a quick recap. The government made an offer in early June this year which I do not believe was costed by KPMG. We made a counteroffer at the end of June and early July which KPMG costed at a minimum of \$1.6 billion. My "bones" tell me that KPMG also costed the government's June offer in excess of \$1.1 billion.

For reasons which I will not repeat, I am becoming much more comfortable with the option of the claimants taking the risk. I have spoken to Harvey Strosberg who shares my views at this time. I have also spoken to Pierre Lavigne who is not as sanguine but I believe can be persuaded. Attached is a letter dated October 15, 1998 from Ivan Whitehall averring on this subject, among others. I have since spoken to Ivan Whitehall and Clif Prowse in a conference call last night and followed up this idea. They are keen on us proposing an offer in principle along these lines. Christine Henderson and I spoke earlier today and she also expressed interest in pursuing the idea further. I have dealt with Eckler Partners today to put some flesh on the skeleton. I hope to have something to you in writing within the next two or three days. This option is predicated on us striking a reasonable deal with the hemophiliacs, keeping all administrative and legal costs under control and figuring out how to economically deal with any opt-outs. If our cohort ends up being less than 10,000 across Canada, the \$1.1 billion should be ample to pay dividends to the HCV claimants in the fullness of time. The skeletal proposal is as follows:

- \$1.1 billion is dedicated to compensate all HCV claimants, including hemophiliacs, secondarily infected and a small cohort of HIV secondarily infected claimants;
- the \$1.1 billion will be invested either directly by the government or notionally by the government at a prudent but attractive rate of return. For example, long term Government of Canada bonds are presently yielding a 6% rate of return;
- the investment income will be dedicated to compensate all HCV claimants, including hemophiliacs, secondarily infected and a small cohort of HIV secondarily infected claimants;

## CAMP CHURCH & ASSOCIATES

- the investment income will be tax free;
- an initial good faith payment will be paid to all claimants;
- exigent claimants will recover either fully or substantially;
- the best disease model available will be utilized to develop a payment scheme for all general and pecuniary damages. A worst case scenario will be developed to determine the percentage of general and pecuniary damages that can be paid at this initial stage so as to ensure that there is virtually no risk that the compensation plan could be underfunded. This will undoubtedly generate an underpayment to the claimants and this underpayment will be recorded and will attract interest which together will form a first charge against any surplus funds when they become available;
- the disease modeling will be refined periodically based upon medical research and the actual profile of the cohort;
- the cohort size will become definitively known;
- at stipulated periods, say 3 years, the fund will be reassessed against the refined disease modeling and cohort size and a reassessment of the capability of the fund to pay general and pecuniary damages will be made. The risks associated with underfunding will become more certain and will almost certainly permit a higher percentage of general and pecuniary damages to be paid. Underpayments incurred up to that time, including interest, will be augmented to bring them up to the new higher percentage of general and pecuniary damages;
- this procedure will be followed until the cohort size is absolutely known and the disease modeling is sufficiently refined to give all parties comfort that general and pecuniary damages can be paid out at 100% recovery;
- if and when it becomes clear (as I think it will) that there is more than ample funds to pay 100% of general and pecuniary damages, dividends will be paid to claimants or their estates, presumably on a pro-rata basis.

This form of compensation offer has some attractive features as follows:

1. it allows us to crystallize our cohort size;
2. it allows us to refine the disease modeling on a continuing basis;
3. it will take into account medical advances including treatment and cures;
4. it will expedite settlement.

## CAMP CHURCH & ASSOCIATES

Before addressing the modifications to our last counteroffer in which the government takes the risk, I wish to alert you to a form of dilemma confronting us. On the one hand, if we keep negotiating towards a risk that the federal government considers acceptable, which risk assessment will be driven by KPMG, we may well be leaving a large sum of money on the table for the benefit of the governments. On the other hand, if we are on or share the risk, we have less difficulty with shaving down our recovery rights because, in the final analysis, any sums saved will eventually redound to the benefit of our clients.

Let me now come to the two core issues in our last counteroffer which are presently dividing the parties. The first is loss of income, including loss of support, and the second is cost of future care. Ivan Whitehall and Clif Prowse have both indicated that these are the critical issues and I wish to explore some proposed modifications.

### Loss of Income and Support

The other side believes that our loss of income and support claims are both too rich and too complex. Simplifying the loss of income and loss of support claims is not simple. I propose the following parameters:

1. income loss will be deemed to end at age no later than 65 and at any earlier time assessed by an assessor on the facts and circumstances presented. The burden will be on the claimant to prove retirement age. I note, parenthetically, that given the age profile of the BC cohort, the majority of claimants are already 50 years of age;
2. the level of income will be based on the average of the last three preceding years unless exceptional circumstances dictate otherwise. Income tax along with Canada Pension Plan contributions and Employment Insurance contributions, will be deducted, again based on the average deductions in the preceding three years;
3. full time income loss will not be recoverable until the claimant reaches stage 3 fibrosis unless exceptional circumstances dictate otherwise and the burden is on the claimant to prove the exceptional circumstances;
4. partial income loss can be recovered at any time but will not exceed 50 days per year unless exceptional circumstances exist and the burden will be on the claimant to prove these exceptional circumstances;
5. there will be deduction of all collateral benefits including:
  - a. sick leave;
  - b. short term disability payments;
  - c. long term disability payments;



## CAMP CHURCH & ASSOCIATES

- d. workers' compensating;
  - e. Canada Pension Plan disability benefits;
  - f. Employment Insurance benefits; and
  - g. pension benefits;
6. both full time and partial income loss will be reviewed annually with audits permitted at any time. It will be incumbent upon the claimants to show that they have applied for all relevant collateral benefits;
7. the inability to work in the home will be recoverable. Work in the home will be deemed to have a value of \$12.00 per hour and will not exceed 30 hours per week unless exceptional circumstances exist and the burden will be on the claimant to prove the exceptional circumstances. Furthermore, compensation for loss of work in the home will not be available to persons who recover income loss unless exceptional circumstances exist, and the burden will be on the claimant to prove those exceptional circumstances;
8. loss of support will be fully recoverable and subject to the same provisions as loss of income with the following additional conditions:
- a. disposable income to spouse and dependents will be deemed to be 66% of the disposable income available;
  - b. loss of support will be assessed annually; and
  - c. mortality will be taken into account.

### Care Costs

The governments are very concerned that this head of damages opens up a very significant exposure. They have raised the specter of enormous care costs associated with quadriplegic or brain damaged claimants. That is not our case. I anticipate that the only claimants who will be recovering under this head of damages will be those who are at end stage disease. The advice I have been given by medical practitioners is that, until then, claimants are generally able to look after themselves. Furthermore, once at end stage disease, the patients usually die within two to three years.

In order to limit the exposure under this head of damages, I propose that care costs be limited as follows:

- 1. care costs will only be recoverable at end stage disease unless exceptional circumstances otherwise exist and care costs are medically supported, the proof of which is upon the claimant;
- 2. fatigue alone will not qualify for care costs unless exceptional circumstances otherwise exist and care costs are medically supported, the proof of which is upon the claimant; and

**CAMP CHURCH & ASSOCIATES**

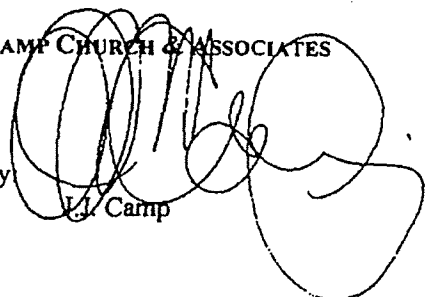
3. care costs cannot exceed \$50,000 annually.

We need to digest and discuss these ideas and I propose that we have a conference call on Wednesday at 4:00 p.m. EST (1:00 p.m. PDT), to discuss these matters.

Yours truly,

**CAMP CHURCH & ASSOCIATES**

By

  
J.J. Camp

JJC:hp

55

**CAMP CHURCH & ASSOCIATES**  
BARRISTERS

*file*

J.J. Camp, Q.C.\*  
David P. Church\*  
Joe Fiorante\*  
Andrew J. Pearson  
Sharon D. Matthews  
Ian G. Schildt

4th Floor, Randall Building  
555 West Georgia Street  
Vancouver, B.C.  
Canada V6B 1Z5

Telephone: (604) 689-7555

Facsimile: (604) 689-7554

FILE REF: 96015/001

October 27, 1998

BY FAX

Gignac, Sutts  
600 Westcourt Place, 251 Goyeau Street  
P.O. Box 670  
Windsor, Ontario  
N9A 6V4  
Attention: Harvey T. Strosberg, Q.C.

This is Exhibit DD referred to in the  
affidavit of J.J. Camp  
made before me on 10/23 19 99  
*[Signature]*  
A Commissioner for taking Affidavits  
For British Columbia

Dear Harvey:

**RE: HCV NEGOTIATIONS**

There are a few things which are confounding us to date and which I believe can be largely overcome by either the claimants taking some or all of the risk.

First is determining the cohort size. It will take several years to determine exactly how many claimants there are including those who opt out of any compensation plan. We must devise a plan that can be put into place now with payouts during the time that the cohort size is crystallized.

The second problem is the progress of the disease. As you know, the progress of HCV is very uncertain but, barring a medical breakthrough or cure, all medical scientists concur that it has a long tail. One particular patient, for example, did not reach cirrhosis until 52 years after

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\* Denotes Law Corporation

## CAMP CHURCH & ASSOCIATES

infection. There is the possibility if not the probability of medical advances and we should devise a model that also accounts for this.

The trick is to get something in place now which will at least get some funds to our clients with them obviously having the right to reapply for further compensation if their disease worsens.

Like you, I am very concerned about the bureaucratic and legal costs of administering a compensation plan that has a very long tail on it with the claimants revisiting the plan from time to time. Let me outline, in skeletal fashion, my initial thinking on constraining the administrative costs.

First, we would control and be responsible for all administration costs.

Second, the first stage will be a written application stage to a single assessor who would determine if the claimants were HCV positive, if they were transfused in the material time and what their disease level was and, hence, what level of compensation they would be presently entitled to. There would be no oral hearings and minimal legal costs associated with this stage.

All assessments would be reviewed by the claimant and by a representative of the government, either of whom could ask that the assessment be reviewed by a review panel.

1. The review panel would consist of three persons, a representative from the claimants, a representative from the governments and a chair. Again, this review panel would operate without oral hearings unless the review panel felt it was necessary. They would reassess the claims and provide a brief written reasons.

## CAMP CHURCH & ASSOCIATES

Either the claimant or the governments would have one further appeal to a single arbitrator (probably from the ADR Chambers Group which now exists across Canada). The arbitrator would conduct a hearing which would result in binding arbitration without any further right of appeal.

I anticipate that our setup costs would be fairly substantial and the administrative costs in the first few years would be fairly hefty. After that, the costs should diminish and would tail off substantially. I envisage that the assessors, review panelists and arbitrators would be paid on an hourly basis which rates would be negotiated by us.

As far as legal fees are concerned, the claimants would be responsible for their own fee arrangements. It may be that we would wish to set limits. For example, in this jurisdiction, we might want to set a maximum recoverable percentage fee.

The critical issue, at this time, is to expedite the settlement process. So far, we have been "toing froing" at a speed that will not probably see this matter resolved before the turn of the century. We both know that that pace is unacceptable. My own view as articulated in my letter of October 23, 1998 at pages 2 and 3 is that a settlement in which we accept all the risk or share of the risk with the governments is the preferred avenue to settle this case. Both levels of government have signaled that if we propose a plan that gives them an acceptable degree of comfort that the \$1.1 billion will not be exceeded, they are prepared to put the matter to bed. The problem is, as we both know, the acceptable level of risk will be dictated for the governments by KPMG. We will keep chasing our tail and leave hundreds of millions of dollars on the table if we continue to walk down that road. Hence, I rather like the proposal in which we use a model which, at the initial stages, is tilted against the claimants so as to ensure the governments are comfortable that the \$1.1 billion will not be exhausted. This will undoubtedly generate an underpayment which will be made whole once

## CAMP CHURCH & ASSOCIATES

the cohort size is crystallized and the model is sufficiently refined. During this period of time, the claimants would be on the risk.

Once the risk reaches an acceptable level to governments, they then go back on the risk and the claimants recover a premium for the fact that they undertook the risk for a period of time. To avoid the spectre of a huge windfall, this premium would be limited to a maximum of, say, 125% of the compensation to which each claimant was entitled.

I realize this appears unduly complicated but I am very concerned that we must propose a plan that does not have any significant risk of shortfall. I do not think the governments, nor the claimants, nor the courts will approve a plan that has a significant risk of shortfall. I realize that "shortfall" is just a word and shortfall can be eliminated by skinning down our initial demands. Nevertheless, at bottom, I think there is a realistic probability that the cohort size will be less than 10,000, that the average recovery will be less than \$100,000 and that there is a distinct possibility if not a probability that our clients can recover more than 100 cents on the dollar if they take or share the risk.

I will call you to discuss at 11:30 a.m. your time on October 28, 1998.

Yours truly,

CAMP CHURCH & ASSOCIATES

By:

J.J. Camp

JJC:

56





Department of Justice  
Canada

Minister of Justice  
Canada

Room 2335, East Memorial Building  
284 Wellington Street  
Ottawa, Canada  
K1A 0H9

Telephone: 613-957-4801  
Facsimile: 613-952-8713

November 2, 1998

BY FAX

Camp, Church and Associates  
4th Floor, Randall Building  
555 Georgia Street West  
Vancouver, British Columbia  
6B 1Z5

Attention: J.J. Camp

Dear Mr. Camp:

Re: Hepatitis C Negotiations  
Our File No. 345006

We have now had the opportunity to report to our clients and have received instructions to pursue discussions with respect to the governments providing a lump sum payment and the plaintiffs taking any risk as to its sufficiency. We have also been instructed to conclude a framework agreement by January 15, 1999.

In addition, we anticipate receiving firm instructions on the urgent claims program in the next 10 days. We are optimistic that this can be resolved favorably; but, we will know better once we have instructions.

In the meantime, we enclose a draft of the eligibility criteria for your consideration prepared by the federal negotiator. We have attempted to keep the administrative process as simple as possible while still protecting our ability to eliminate prevalent cases.

In addition, we have used the wording of the *Canada Pension Plan Act* to define disability which closely resembles the definition you suggested; however, our client is more comfortable with the wording of the federal statute.

This is Exhibit "EEE" referred to in the  
affidavit of J.J. Camp  
made before me on NOV 23 1998  
Commissioner for taking Affidavits  
For British Columbia

- 2 -

We also enclose our letter to you of October 15 and encourage you to provide us with the requested material at your very earliest opportunity. As you know, there are upcoming negotiation meetings in Ottawa on November 9 and 10 and we believe that without your input, these meetings would not be at all productive. May we please hear from you at your earliest convenience.

Yours truly,

*per Catherine Moore*

L. G. Whitehall, Q.C.  
Chief General Counsel

gt

cc: Clif Prowse  
André Juneau  
Carol Ann Duffy  
Bonnie Tough

*57*

**CAMP CHURCH & ASSOCIATES**  
BARRISTERS

J.J. Camp, Q.C.\*  
David P. Church\*  
Joe Fiorante\*  
Andrew J. Pearson  
Sharon D. Matthews  
Ian G. Schildt

This is Exhibit "FFF" referred to in the  
affidavit of JJCAMP  
made before me on NOV 23 19 99  
A Commissioner for taking Affidavits  
for British Columbia

4th Floor, Randall Building  
555 West Georgia Street  
Vancouver, B.C.  
Canada V6B 1Z5

Telephone: (604) 689-7555

Facsimile: (604) 689-7554

FILE REF: 96015/001

November 16, 1998

VIA FAX NO. (613) 952-8713

VIA FAX NO. 660-2636

Department of Justice  
Office of the Chief General Counsel  
Room 2341, 284 Wellington Street  
Ottawa, Ontario K1A 0H8

Ministry of Attorney General  
Legal Services Branch  
1301 865 Hornby Street  
Vancouver BC V6Z 2H4

Attention: Ivan G. Whitehall, Q.C.

Attention: D. Clifton Prowse

Dear Sirs:

**Re: HCV Negotiations**

Enclosed is a copy of our November 16, 1998 offer to settle the 1986-1990 class actions. The offer has been formulated as a frame work document which, if accepted, will require formal settlement documentation. We have tried to cover off all critical elements which we have discussed over the last several months.

This offer has been reviewed by counsel responsible for each of the 1986-1990 class actions. You will see that I am copying Harvey Strosberg, Q.C., Pierre Lavigne and Michel Savonitto.

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\* Denotes Law Corporation

**CAMP CHURCH & ASSOCIATES**

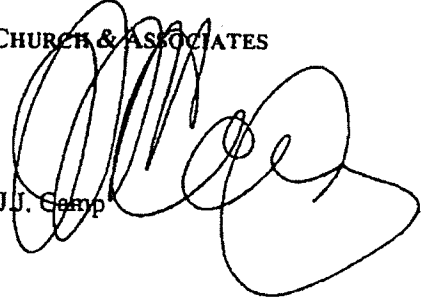
The offer does not address the administration of the compensation plan nor class counsel fees.

Yours truly,

**CAMP CHURCH & ASSOCIATES**

By:

J.J. Camp



JJC:hp

cc: Harvey Strosberg, Q.C.  
Pierre Lavigne  
Michel Savonitto

November 16 , 1998

## **WITHOUT PREJUDICE**

### **PREAMBLE**

The following is intended to be a framework agreement between the Class Members and the FPT Governments, both as defined below.

### **CLASS PERIOD**

1. The class period shall be from January 1, 1986 to July 1, 1990 inclusive ("Class Period").

### **ELIGIBILITY**

#### **Class Membership**

2. The class shall consist of:
  - (a) persons resident in Canada who received blood or blood derivatives (except those set out in Schedule "A") ("Blood") supplied by the Canadian Red Cross Society ("CRC") during the Class Period and who are or were infected with the Hepatitis C virus ("HCV") as evidenced by a positive HCV antibody test or Polymerase Chain Reaction ("PCR") test; and
  - (b) persons who are or were infected with HCV by a partner or parent who fall within the definition set forth in paragraph 2(a);

except:

- (c) persons in paragraph 2(a) who the Federal Government or Provincial and Territorial Governments ("FPT Governments") prove were not infected by Blood during the Class Period; and
  - (d) persons in paragraph 2(a) or 2(b) who have used non-prescribed intravenous drugs unless those persons prove on a balance of probabilities either that they were infected for the first time by Blood during the Class Period or that they were infected for the first time by a person who falls within the definition set forth in paragraph 2(a);
- ("Class Members").

### **Method of Proof**

3. The method of proof pertaining to paragraph 2(a) shall be satisfied:
- (a) by production of medical, clinical, hospital, CRC, Canadian Blood Services or Hema-Quebec records which confirm that the Class Member received Blood during the Class Period; or
  - (b) where such records are unavailable, by way of such other evidence which establishes on a balance of probabilities that the Class Member received Blood during the Class Period; and
  - (c) a statutory declaration from the Class Member in which the Class Member states that he or she has never injected non-prescription intravenous drugs.

4. The method of proof pertaining to paragraph 2(b) shall be satisfied by:
- (a) evidence that the Class Member is the partner or child of a person who falls within paragraph 2(a);
  - (b) evidence that establishes on a balance of probabilities that the Class Member became infected by a person who falls within paragraph 2(a); and
  - (c) a statutory declaration from the Class Member or his or her guardian in which the Class Member or the guardian states that the Class Member has never injected non-prescription intravenous drugs.

5. The method of proof pertaining to paragraph 2(c) shall be satisfied by a traceback procedure which must be completed within 6 months from the date of receipt of the Class Member's completed claim form and which establishes that each donor of Blood received by the Class Member during the Class Period has not tested positive for the HCV antibody.

6. The method of proof pertaining to paragraph 2(d) shall be satisfied by establishing on a balance of probabilities that the Class Member was infected for the first time by receipt of Blood during the Class Period or that they were infected for the first time by a person who falls within the definition of paragraph 2(a).



### **Class Membership Closed**

7. No persons may register as a Class Member after July 1, 2010, subject to any order of the courts to extend the registration period.

### **THE SETTLEMENT FUND**

8. The settlement fund shall consist of the sum of \$1.1 billion Canadian dollars plus any sums received by the Class Members from the *CRC Companies' Creditors Arrangement Act* proceedings less:

- (a) an agreed upon amount paid to the class of HCV infected hemophiliacs, provided that the amount does not allow for an HCV infected hemophiliac to receive more on a per capita basis than a Class Member can receive under the Compensation Plan on a per capita basis;
- (b) an agreed upon amount paid to the class of HIV secondarily infected spouses and children; and
- (c) other agreed upon incidental amounts

("Fund").

9. The Fund shall be dedicated to the payment of compensation to Class Members and other related amounts and shall be notionally invested by the FPT Governments at a deemed interest rate no less than 4% from April 1, 1998 for the duration

of the Compensation Plan. The income deemed to be earned by the Fund shall be added to the Fund.

10. Any income deemed to be earned by the Fund during the duration of the Compensation Plan shall not be subject to income tax, or, if subject to income tax, such income tax shall be paid by the FPT Governments.

## **COMPENSATION PLAN**

### **Duration of the Compensation Plan**

11. The compensation plan shall commence as at the 1<sup>st</sup> day of January, 1999 and shall terminate on a day to be ordered by the courts.

### **Income Tax**

12. No amount paid to Class Members under the Compensation Plan shall be subject to income tax. An advance ruling from Revenue Canada and any other applicable provincial income taxing authority will be obtained by the FPT Governments to this effect prior to the commencement of the Compensation Plan.

### **Compensation**

13. Compensation will be paid to Class Members out of the Fund as follows:

- (a) Level 1 - all Class Members who demonstrate HCV antibody

positivity shall be paid the sum of \$10,000 as compensation for general and pecuniary damages;

- (b) Level 2 - all Class Members who demonstrate past or present PCR positivity shall be paid the further sum of \$20,000 as compensation for general and pecuniary damages;
- (c) Level 3 - all Class Members who demonstrate stage 2 fibrosis or who have met or meet a protocol for interferon treatment or its equivalent (even if such treatment is contraindicated), whether or not the Class Member underwent interferon treatment or its equivalent, except those Class Members who have undergone a biopsy which indicates a level of fibrosis less than stage 2, shall be paid the further sum of \$30,000 as compensation for general and pecuniary damages. In the alternative, the Class Member may elect to forego the compensation of \$30,000 at this level and shall be entitled to seek pecuniary damages set forth in paragraph 16;
- (d) Level 4 - all Class Members who demonstrate stage 3 fibrosis shall be entitled to seek pecuniary damages set forth in paragraph 16;
- (e) Level 5 - all Class Members who demonstrate cirrhosis (stage 4 fibrosis) or porphyria cutanea tarda attributable to HCV shall be paid the further sum of \$65,000 as compensation for general damages and shall be entitled to seek pecuniary damages set forth in paragraph 16;

- (f) Level 6 - all Class Members who demonstrate decompensation of the liver, hepatocellular cancer, thrombocytopenia (low platelets), B-cell lymphoma or mixed cryoglobulinemia attributable to HCV shall be paid the further sum of \$100,000 as compensation for general damages and shall be entitled to seek the pecuniary damages set forth in paragraph 16; and
- (g) Level 7 - Interferon or Equivalent Treatment - all Class Members who undergo interferon or equivalent treatment shall be paid the further sum of \$1,000 for each completed month of treatment as compensation for general damages.

14. Except for Level 7, if a Class Member qualifies at any level, she or he is entitled to the payment(s) at all prior levels.

#### **General Damages - Estate Claims**

15. The estates of all Class Members who died prior to the commencement of the Compensation Plan and whose infection with HCV materially contributed to their death are entitled to recover \$50,000 from the Fund in lieu of all general damages and all pecuniary damages which arose prior to the commencement of the Compensation Plan.

### **Pecuniary Damages - Loss of Income or Lost Value of Work in the Home**

16. All Class Members who demonstrate stage 3 fibrosis or more severe HCV disease process or who elect pecuniary damages under paragraph 13(c), and whose infection with HCV materially contributed to loss of income or lost value of work in the home shall be entitled to recover from the Fund pecuniary damages for these losses. The loss of income and lost value of work in the home shall be first calculated without reference to the restrictions set forth in paragraph 16 (a) through (e). The amount of pecuniary damages under this paragraph to be paid initially to the Class Member shall be restricted on the following terms and conditions:

- (a) earned income is deemed to terminate no later than age 65;
- (b) the maximum gross income permitted for the purpose of calculating income loss is \$75,000;
- (c) the following amounts will be deducted from gross income to calculate loss of income:
  - (i) income tax and all other payroll deductions based on the average income tax and payroll deductions paid in the last preceding three years in which full time income was earned unless exceptional circumstances dictate otherwise;
  - (ii) Canada or Quebec Pension Plan payments to which the Class Member is or was eligible;

- (iii) Employment Insurance payments to which the Class Member is or was eligible;
  - (iv) sickness, accident or disability income replacement payments to which the Class Member is or was eligible; and
  - (v) HIV Emergency Assistance Plan and HIV Multi Provincial Territorial Assistance Plan payments to which the Class Member is or was eligible;
- (d) after deduction amounts set forth in paragraph 16(c), the Class Member shall recover 70% of the established income loss; and
- (e) lost value of work in the home shall be valued at \$12.00 per hour to a maximum of 20 hours per week and the Class Members shall recover 70% of the loss off value of household services calculated on this basis.

The restrictions set forth in (a) through (e) above are subject to being removed in whole or in part as set forth in paragraph 26.

**Pecuniary damages - Medication and Treatment Costs**

17. Each Class Member shall recover from the Fund all past and future medication and treatment costs not covered by FPT Government health care plans.

### **Pecuniary damages - Care Costs**

18. Each Class Member whose infection with HCV materially contributes to the necessity for reasonable personal care costs shall be entitled to recover from the Fund pecuniary damages for these costs. The reasonable personal care costs shall be first calculated without reference to the restrictions set forth in paragraph 18 (a) and (b). The amount of pecuniary damages under this paragraph to be paid initially to the Class Member shall be restricted on the following terms and conditions:

- (a) care costs will only be paid to those Class Members who meet the criteria set forth in paragraph 13(f);
- (b) care costs will be paid to a maximum of \$50,000 per year;
- (c) care costs must be supported by the recommendation of a treating physician;
- (d) care costs shall not include reasonably available services covered by FPT Government health care plan or services to which the Class Member is eligible under any private insurance plan; and
- (e) care costs shall not include services for which the Class Member has received compensation for lost value of work in the home pursuant to paragraph 16.

The restrictions set forth in (a) and (b) above are subject to being removed in whole or in part as set forth in paragraph 26.

### **Pecuniary Damages - Out-Of-Pocket Expenses**

19. Each Class Member whose infection with HCV materially contributed to an outlay of out of pocket expenses shall recover from the Fund their pecuniary damages all reasonable out of pocket expenses except those expenses covered by FPT Government health care plans or by any private insurance plan benefits to which the Class Member or guardian is eligible. Out of pocket expenses shall include travel expenses, hotel expenses, telephone expenses and other similar expenses attributable to seeking medical advice or treatment of the Class Member's infection with HCV.

### **Pecuniary damages - Loss of Support and Lost Value of Work in the Home**

20. In the event of the death of a Class Member who has died or who dies and whose infection with HCV materially contributed to their death, the spouse, common law spouse, partner, children and parents of the deceased Class Member ("Dependants") are entitled to recover from the Fund their pecuniary damages for loss of support and lost value of work in the home. The loss of support and lost value of work in the home shall be first calculated without reference to the restrictions set forth in paragraph 20 (a), (b), (c) (iii) and (iv), (d) and (e). The amount of pecuniary damages under this paragraph to be paid initially to the Dependants shall be restricted on the following terms and conditions:

- (a) earned income is deemed to terminate no later than age 65;



- (b) the maximum gross income permitted for the purpose of calculating income loss is \$75,000;
- (c) the following amounts will be deducted from gross income to calculate loss of support:
  - (i) income tax and all other payroll deductions based the average income tax and payroll deductions paid in the last preceding three years in which full time income was earned unless exceptional circumstances dictate otherwise;
  - (ii) after making the deductions set forth in paragraph 20(c)(i), 30% of the deceased Class Member's disposable income representing his or her personal consumption;
  - (iii) Canada or Quebec Pension Plan payments to which the Dependents of the deceased Class Member are eligible as a result of the death of the deceased Class Member;
  - (iv) HIV Emergency Assistance Plan and HIV Multi Provincial Territorial Assistance Plan payments to which the Dependents of the deceased Class Member are eligible as a result of the death of the Class Member;
- (d) after deduction amounts set forth in paragraph 20(c), the Dependents of the deceased Class Member shall recover 70% of the established loss of support and the resulting amount shall be allocated 5% to each

dependant child and each dependant parent and the balance to the spouse, common law spouse or partner;

- (e) lost value of work in the home shall be valued at \$12.00 per hour to a maximum of 20 hours per week and the Dependents of the deceased Class Member shall recover 70% of the lost value of work in the home calculated on this basis.

The restrictions set forth in (a), (b), (c) (iii) and (iv), (d) and (e) above are subject to being removed in whole or in part as set forth in paragraph 26.

#### **Pecuniary Damages - Loss of Care, Companionship and Guidance**

21. In the event of the death of a Class Member who has died or who dies and whose infection with HCV materially contributed to their death, the spouse, common law spouse, partner, children and parents and siblings of the deceased Class Member are entitled to recover from the Fund their pecuniary damages for loss of care, companionship and guidance restricted to the following amounts:

- (a) \$25,000 for the spouse, common law spouse, or partner of the deceased Class Member;
- (b) \$10,000 for each child of the deceased Class Member who is under the age of 21 as at the date of death of the Class Member;
- (c) \$5,000 for each child of the deceased Class Member who is the age of 21 or older as at the date of the death of the Class Member;

- (d) \$5,000 for each parent of the deceased Class Member; and
- (e) \$5,000 for each sibling of the deceased Class Member.

#### **Pecuniary Damages - Funeral Costs**

22. In the event of the death of a Class Member who has died or who dies and whose infection with HCV materially contributed to their death, the estate of the deceased Class Member or a person who has paid the funeral expenses is entitled to recover from the Fund all uninsured reasonable funeral costs restricted to \$5,000. The restrictions set forth in this paragraph is subject to being removed in whole or in part as set forth in paragraph 26.

#### **PERIODIC ASSESSMENTS OF DAMAGES**

23. Class Members may have their general damages and pecuniary damages set forth in paragraphs 13, 16, 17, 18 and 19 assessed periodically but no more frequently than every two years, unless exceptional circumstances dictate otherwise.

#### **INFLATION**

24. All amounts recited in the compensation plan shall be adjusted annually by the increase in the Consumer Price Index. The first adjustment shall occur on January 1, 2000.

## **PERIODIC REASSESSMENT OF THE FUND**

25. The financial viability of the Fund will be assessed every 3-years. The purpose of the periodic assessments is twofold: first, to determine the overall viability of the Fund to satisfy all future claims on the Fund; and second, to determine if removal of the restrictions in whole or in part set forth in paragraphs 16 (a) through (e), 18(a) and (b), 20(a), (b), (c) (iii) and (iv), (d) (e), and 22 is reasonable and, if so, the amount by which the restrictions should be removed.

## **REMOVAL OF COMPENSATION RESTRICTIONS**

26. In the event that it is determined to be reasonable to remove the restrictions, in whole or in part, set forth in paragraphs 16 (a) through (e), 18(a) and (b), 20(a), (b), (c) (iii) and (iv), (d) (e), and 22, the restrictions will be removed in the following order of priority:

- (a) first, the restriction of 70% of net income loss and net loss of support set forth in paragraphs 16 and 20 will be raised to a maximum of 100% and those Class Members or beneficiaries of Deceased Class Members who were subject to a percentage restriction on their recovery under paragraphs 16 and 20 shall recover retroactively to the same extent plus interest at the prime rate of interest charged by Class A banks from time to time;
- (b) next, the restrictions on recovery of care costs to Class Members set

forth in paragraph 18 shall be lifted in whole or in part, and those Class Members who were subject to the restrictions on their recovery under paragraph 18 shall recover retroactively to the same extent plus interest at the prime rate of interest charged by Class A banks from time to time;

- (c) next, the restriction of 20 hours per week for the purpose of calculating the value of lost work in the home set forth in paragraphs 16 and 20 shall be removed in whole or in part up to the actual provable number of lost hours of work in the home and those Class Members or Dependants of deceased Class Members who were subject to this restriction under paragraphs 16 and 20 shall recover retroactively to the same extent plus interest at the prime rate of interest charged by Class A banks from time to time;
- (d) next, the restriction of \$75,000 on gross income for the purposes of calculating income loss and loss of support set forth in paragraphs 16 and 20 will be lifted in whole or in part up to the actual gross income and those Class Members or beneficiaries of Deceased Class Members who were subject to this restriction under paragraphs 16 and 20 shall recover retroactively to the same extent plus interest at the prime rate of interest charged by Class A banks from time to time;

- (e) next, the restriction of \$5,000 on funeral costs set forth in paragraph 22 shall be lifted in whole or in part up to the actual reasonable funeral costs and the estates of the deceased Class Members which were subject to this restriction under paragraph 22 shall recover retroactively to the same extent plus interest at the prime rate of interest charged by Class A banks from time to time; and
- (f) next, the deduction of income tax, other payroll benefits and other collateral benefits for the purposes of calculating income loss and loss of support set forth in paragraphs 16 and 20 will be removed in whole or in part and those Class Members or beneficiaries of Deceased Class Members who were subject to this restriction under paragraphs 16 and 20 shall recover retroactively to the same extent plus interest at the prime rate of interest charged by Class A banks from time to time.

27. In the event that the restrictions set forth in paragraphs 16 (a) through (e), 18(a) and (b), 20(a), (b), (c) (iii) and (iv), (d) (e), and 22 the Class Members, Estates and Dependents have been fully removed in accordance with paragraph 26, at the termination of the Compensation Plan all remaining monies in the Fund shall be remitted to the FPT Governments.

## **SUBROGATION**

28. No subrogated claims of the FPT Governments or any other subrogated claims will be paid out of the Fund.

## **LIFE INSURANCE**

29. Any life insurance payments received by a Class Member or Dependents or Estate shall not be taken into account for any purpose.

## **COURT APPROVAL AND SUPERVISION OF THE COMPENSATION PLAN**

30. The Compensation Plan shall be approved without any material differences by the superior courts of the provinces of British Columbia, Quebec and Ontario.

31. No changes or modifications to the Compensation Plan shall be made unless they are approved without any material differences by the superior courts of the provinces of British Columbia, Quebec and Ontario.

58





Department of Justice  
Canada

Ministère de la Justice  
Canada

Room 2335, East Memorial Building  
284 Wellington Street  
Ottawa, Canada  
K1A 0H9

Telephone: 613-957-4801  
Facsimile: 613-952-8713

This is Exhibit "GGG" referred to in the  
affidavit of J.J. Camp  
made before me on Nov. 18, 1998

*[Signature]*  
A Commissioner for taking Affidavits  
For British Columbia

November 18, 1998

BY FAX

Camp, Church and Associates  
4th Floor, Randall Building  
555 Georgia Street West  
Vancouver, British Columbia  
V6B 1Z5

Attention: J.J. Camp

Dear Mr. Camp :

Re: Hepatitis C Negotiations  
Our File No. 346006

I have your offer of 16 November 1998. As we have serious concerns by reason of the positions you have now taken, I am writing you indicating the position of the Government of Canada. I have not had the opportunity to discuss this matter with my colleagues; but, given its seriousness, I wanted you to have my views prior to our meeting.

In the past several months we have negotiated discreet items in your offer. In part they addressed our respective assessment of our chances of success should these cases go to court. I do not intend to get into a discussion at this stage of our respective views as we have agreed that it would be better to address the amount of damages the governments would be prepared to pay, and the courts approve, instead of approaching the problem from another point of view.

I am particularly disappointed since I was of the view that subject to some minor items that I will refer to below we could have concluded an agreement in principle on Thursday. That will not be possible if the present form of the offer stands.

In particular, throughout this lengthy negotiation process certain principles have been adhered to and reflected in your two previous proposals; for example, in your letter of July 13 it was accepted that economic losses would be calculated

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- 2 -

"... up to age 65 calculated after deduction of UIC, CPP sickness and accident, long term disability payments and every other commercial or governmental collateral benefit of any nature of kind. No subrogated claims will be paid from the Fund. In calculating net wage losses, the referee shall also make deductions for the income tax that would have been paid by the class member if the income had been paid."

In general, your previous proposals have followed a format of general damages payable at various stages, economic damages as described above payable from a particular stage, provision for estates and dependents, payment for medication and future care and so forth. As discussions continued further issues were addressed including the issue of eligibility, the amount of initial payment on being shown to be HCV positive etc. Indeed, adjustments were made in order to reflect other concerns raised by the governments.

As you are aware, when we costed your last offer we were of the opinion that your offer was well in excess of the maximum the governments were prepared to pay. In order to address this we discussed whether the plaintiffs were prepared to accept the risk. There was no question of a wholesale renegotiation of the offer; however, in order to accept the risk, it was recognized that the scheme of payments must have some flexibility to permit the fund to be managed appropriately. In particular:

1. in order to better manage this risk, initial economic damage payments were to be capped at \$75,000 and 70% of the loss;
2. if the fund was sufficient, claimants would be made whole with respect to these two specific restrictions; however, any surplus moneys would be returned to governments; and,
3. we were prepared to recognize an interest component if sufficient funds were available.

In fact, your offer contains a fundamental change in principle. Your approach now seeks to exhaust the fund, through the following "top-ups" which were never discussed at the table:

1. income loss past age 65;
2. amounts included in economic loss for
  - income tax and other payroll deductions;
  - Canada and Quebec Pension Plan benefits;
  - Employment Insurance benefits;
  - sickness, accident or disability payments;
  - HIV EAP or MPTAP payments;
3. excess homecare costs;
4. care costs for all Class Members at all stages of disease;
5. care costs in excess of \$50,000 per year; and,
6. funeral costs in excess of \$5,000.

- 3 -

In addition, I note that while there is ample provision to adjust payments upward if there is a surplus in the fund, there appears to be no mechanism to adjust payments downward to accommodate unanticipated insufficiencies in the fund.

In my view, this approach does not capture the spirit of our negotiations and although, as I said, we were at the point of concluding an agreement in principle, but for some relatively minor items, this is no longer the case. Your proposal no longer reflects any risk in the litigation process. It also does not reflect that the political risks will always remain with the governments whatever legal agreements we reach.

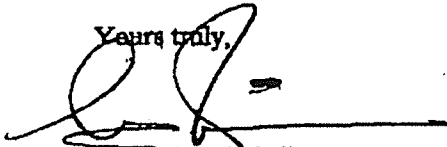
I would ask you that you reconsider your position prior to our reconvening on Thursday as, in our view, your proposal is designed to simply empty the till. I have no instructions to negotiate on that basis.

Earlier I referred to several outstanding but relatively minor items that will have to be addressed in our negotiations. I see them as follows:

- Administration. I will be getting an opinion on this. I understand that you will give us a memorandum as well;
- Out of pocket expenses;
- Income for homemakers;
- Obligation to exploit whatever institutional support is available before coming to the fund;
- Fees;
- Releases;
- Red Cross;
- Eligibility; and,
- Income Tax.

I recognize that the items listed above will be difficult to resolve but I consider them to be mechanical in nature; and, therefore, I would be prepared to recommend an agreement in principle even if we do not reach a final resolution on these items provided some principles can be established. I am not prepared to recommend any agreement if you insist on paragraph 26, except as it relates to the \$75,000 and 70% cap.

Yours truly,



Ivan G. Whitehall, Q.C.  
Chief General Counsel

cc: Clif Prowse  
Pierre Lavigne  
Harvey Strosberg, Q.C.

59

**CAMP CHURCH & ASSOCIATES**  
BARRISTERS

J.J. Camp, Q.C.\*  
David P. Church\*  
Joe Fiorante\*  
Andrew J. Pearson  
Sharon D. Matthews  
Ian G. Schildt

This is Exhibit "H" referred to in the  
affidavit of J.J. Camp  
made before me on NOV. 23 1999  
A Commissioner for taking Affidavits  
For British Columbia

4th Floor, Randall Building  
555 West Georgia Street  
Vancouver, B.C.  
Canada V6B 1Z5

Telephone: (604) 689-7555

Facsimile: (604) 689-7554

FILE REF: 96015-001

20 November 1998

VIA FAX NO. (613) 952-8713

COPY

Department of Justice  
Office of the Chief General Counsel  
Room 2341, 284 Wellington Street  
Ottawa, Ontario  
K1A 0H8

Attention: Ivan G. Whitehall, Q.C.

VIA FAX NO. 660-2636

Ministry of Attorney General  
Legal Services Branch  
1301 865 Hornby Street  
Vancouver BC  
V6Z 2H4

Attention: D. Clifton Prowse

Dear Sirs:

Re: HCV Negotiations

Enclosed is a copy of our Offer dated November 16, 1998 which had changes incorporated in the body of the document where agreements were reached at our meeting on Thursday, November 19, 1998. In addition, you will see that we have added at various points references to further points of agreement that were reached at our meeting. I have taken the liberty of adding one or two other refinements but not of a substantive nature that have been brought to my attention.

ODMA\GRIPWISE\CC DOM CC POSSDATA 56073 1

\* Denotes Law Corporation

## CAMP CHURCH & ASSOCIATES

I believe that we are very close to a framework agreement on the principal points. I believe there are only two substantive matters remaining:

- (a) who will pay for defence costs pertaining to persons who do not participate in the compensation plan; and
- (b) the issue of Class counsel fees vis-a-vis Quebec.

I anticipate resolving the first of these issues forthwith and I leave it to you and the Quebec counsel to resolve the second issue.

I understand our course of action henceforward to be as follows:

- (a) I will get the coalition of claimants' lawyers on side with the framework agreement;
- (b) you and Cliff Prowse will brief the A.G. lawyers acting for the provinces on the framework agreement; and
- (c) on the assumption that the framework agreement passes muster at that stage, it will be recommended to the various governmental authorities across Canada including the Federal Government of Canada for acceptance as a framework agreement.

In the meantime, there are a host of issues that need to be addressed. You have my assurance that we will continue to work vigorously to iron out the remaining matters.

I appreciate that the governments also have to strike a deal with the hemophiliac Class and I understand that you will keep us closely abreast of developments in that respect.

May I take this opportunity to commend both of you and your provincial colleagues and associates for the vim and vigour that you have brought to bear to bring this matter this far.

Yours truly,

CAMP CHURCH & ASSOCIATES

By:

J.J. Camp

JJC:pb  
encl.

## CAMP CHURCH & ASSOCIATES

cc: Harvey Strosberg, Q.C.  
cc: Pierre Lavigne  
cc: Michel Savonitto

60



DEC. 8. 1998 5:40PM

JUSTICE (613)952-8713

NO. 147 P. 2



Department of Justice  
Canada

Ministère de la Justice  
Canada

Room 2335, East Memorial Building  
284 Wellington Street  
Ottawa, Canada  
K1A 0H9

Telephone: 613-957-4801  
Facsimile: 613-952-8713

This is Exhibit "III" referred to in the  
affidavit of J.J. Camp  
made before me on Dec 15 19 99

A Commissioner for Taking Affidavits  
For British Columbia

**WITHOUT PREJUDICE**

December 8, 1998

BY FAX

Mr. J.J. Camp  
Camp, Church and Associates  
4th Floor, Randall Building  
555 Georgia Street West  
Vancouver, British Columbia  
V6B 1Z5

Mr. Harvey Strosberg, Q.C.  
Gignac Sutts  
Barristers and Solicitors  
600 - 251 Goyeau Street  
P.O. Box 670, Stn. A  
Windsor, Ontario  
N9A 6V4

Mr. P.R. Lavigne  
Barrister and Solicitor  
440 Laurier Avenue West, Suite 200  
Ottawa, Ontario  
K1R 7X6

Dear Messrs. Camp, Strosberg and Lavigne:

Re: Hepatitis C Negotiations  
Our File No. 345006

I have Mr Strosberg's letter of December 2, 1998 enclosing a draft settlement agreement. In Mr. Strosberg's letter he states that all interested parties have now reached a consensus which is represented in the attached proposals.

I have subsequently received a letter from Mr. Savonitto indicating that Quebec is to be dealt with separately in these negotiations. As I have indicated to you, our goal is to reach a pan-Canadian agreement. I would like to have your clarification on this issue.

I have also received a call from Ms. Blackburn from McDougall Patterson. She advises that she acts for a number of HIV victims and Ms. Ring does not act for her clients. In any event, as I told you, the HIV negotiations and the HCV negotiations are not linked. As a matter of policy the governments will institute a program that compensates HIV secondary victims whether alive or

- 2 -

through an estate claim equally. The compensations are in a lump sum amount of \$240,000 and as I understand they are not negotiable.

As for the hemophiliacs, I would like to have confirmation that all counsel are in agreement with the proposed settlement.

Finally a brief note regarding the British Columbia class action. Mr. Kline advised me that he is acting for a group of claimants who were separately certified in the Killogh action, but who in fact fall within the definition of the Class Members in the proposed agreement. We understand from the correspondence between you and Mr. Kline, with which we were copied, that a new counsel was appointed for these claimants. Clearly, this issue will have to be addressed. I would appreciate your advice in this regard as soon as possible.

I am enclosing a draft settlement agreement that I and all of the provinces and territories, with the exception of Quebec and Ontario, are prepared to recommend to our clients. As you will note there are changes from your draft, both substantive and drafting. As for Quebec and Ontario, they seek a full release of the Red Cross.

We look forward to your advice with a view of finalizing this matter.

Yours truly,



I. G. Whitehall, Q.C.  
Chief General Counsel

IGW:rn  
Attach

## FRAMEWORK AGREEMENT

The following is intended to be a framework agreement between the class members as hereinafter defined and the Federal, Provincial and Territorial Governments ("FTP Governments").

### DEFINITIONS

"Blood" means blood or blood derivatives or blood products supplied by the Canadian Red Cross Society for transfusion;

"Class Member" includes a person referred to in paragraph 2 whether or not that person is a member of the class in the provinces of Ontario, Quebec or British Columbia;

"FTP Governments" means the Federal, Provincial and Territorial Governments of Canada;

"Materially Contributed" in this agreement means that HCV was the sole or a primary cause of the death or disability referred to;

"Trustee" means the person who administers the Fund;

"Total Disability" means a medical condition materially contributed to by Hepatitis C that renders the Class Member entirely and continuously incapable of engaging for wages or profit in any occupation or employment for which the Class Member is reasonably suited having regard to his or her skill, education, training or experience.

### ELIGIBILITY

#### CLASS PERIOD

1. The class period shall be from January 1, 1986 to July 1, 1990 inclusive ("Class Period").

#### CLASS MEMBERSHIP

2. The class shall consist of :
  - a) persons who were infected with HCV by Blood (except those set out in Schedule "A") during the Class Period;
  - b) persons who are or were infected with HCV by a partner who falls within the definition set forth in paragraph 2(a) before the expiration of two years from the date of the partner's claim for compensation under this Plan;
  - c) persons who are or were infected with HCV by a mother who falls within the definition set forth in paragraph 2(a); and,

- d) hemophiliacs who were infected with HCV and received Blood during the Class Period;

("Class Members")

**METHOD OF PROOF**

3. The proof pertaining to paragraph 2(a) and 2(d) shall be satisfied:
  - a) by production of medical, clinical, hospital, CRC, Canadian Blood Services or Hema-Quebec records which confirm that the Class Member received Blood during the Class Period or where such records are unavailable, by way of such other evidence which establishes on a balance of probabilities that the Class Member received Blood during the Class Period;
  - b) proof that the Class Member tests positive for Hepatitis C (HCV) as evidenced by a positive HCV antibody test or Polymerase Chain Reaction ("PCR") test; and,
  - c) a statutory declaration from the Class Member in which the Class Member swears or affirms that he or she has never injected non-prescription intravenous drugs and in the case of 2(a), 2(b) and 2(c) only, that the Class member did not receive blood outside of the class period;
4. The Trustee may, in its sole discretion, require the production of any medical, clinical, hospital or other records in the possession or control of the Class Member. Failure to deliver such records will render the application incomplete.
5. The proof pertaining to paragraph 2(b) and 2(c) shall be satisfied by:
  - a) evidence that the Class Member is or was the partner or child of a person who fits within paragraph 2(a) or 2(d);
  - b) evidence that establishes on a balance of probabilities that the Class Member became infected by a person who fits within paragraph 2(a) or 2(d); and,
  - c) a statutory declaration from the Class Member or his or her guardian in which the Class Member or the guardian swears or solemnly affirms that the Class Member has never injected non-prescription intravenous drugs and in the case of a person who was infected by a person falling within 2(a), 2(b) and 2(c) only that the Class Member did not receive blood outside the class period.
6. Class members who have used non-prescribed intravenous drugs shall not be entitled to participate in the Compensation Plan unless those persons prove on a balance of probabilities either that they were infected for the first time by receipt of Blood during the Class Period or by a person who fits within the

definition particularized in paragraph 2(a) or 2(d) and who is not otherwise disqualified under this agreement.

7. If within a reasonable time after the application is completed the Trustee obtains results from a traceback procedure that establish that each donor of Blood received by the Class Member during the Class Period has not tested positive for the HCV antibody, the Class Member shall not receive any further payments under this agreement.

#### CLOSING OF CLASS MEMBERSHIP

8. No person may register as a Class Member after July 1, 2010, subject to any order of the court to extend the registration period.
9. No Class Member may participate in this agreement after the class membership has closed.

#### THE SETTLEMENT FUND

10. The settlement fund shall consist of the sum of \$1.1 billion Canadian dollars payable by the FPT Governments; plus any sums received by the Class Members from the CRC or in the *Companies' Creditors Arrangement Act* proceedings relating to the CRC, or any other proceedings, less:
  - a) amounts paid to the class of HIV secondarily infected spouses and children based on a formula as follows:
    - \$240,000. for each secondarily infected spouse or child; and for each estate of a secondarily infected spouse or child;
  - b) any final judgement against the FPT Governments and one-third of the defence costs arising out of any such actions by Class Members who opt out of the settlement or who are not bound by the settlement or by persons who have received the blood derivatives particularized in Schedule "A" within the Class Period;
  - c) any agreed-upon incidental amounts; and,
  - d) reasonable class counsel fees as approved by the courts pursuant to paragraph 44 and 45 herein.
11. The Fund shall be dedicated to the payment of compensation to Class Members and other related amounts and shall be notionally invested by the FPT Governments at the interest rate paid from time to time on Long Term Canada Savings Bonds from April 1, 1998 for the duration of the Compensation Plan. The monthly income deemed to be earned by the Fund shall be added to the Fund.

12. Any income deemed to be earned by the Fund during the duration of the Compensation Plan shall not be subject to income tax, or if subject to income tax, such income tax will be refunded to the Fund.

#### COMPENSATION PLAN

##### DURATION

13. The Compensation Plan shall commence as at the 1st day of January, 1999 and shall terminate on a day to be ordered by the courts.

##### COMPENSATION

14. Compensation, inclusive of pre-Judgement interest, will be paid to Class Members out of the Fund as follows:
- a) Level 1 - all Class Members who demonstrate HCV antibody positivity by the most current test shall be paid the sum of \$10,000 as compensation at this Level;
  - b) Level 2 - all Class Members who demonstrate past or present PCR positivity (HCV viral replication) by the most current test shall be paid the further sum of \$20,000 as compensation at this Level;
  - c) Level 3 - all Class Members who demonstrate stage 2 fibrosis of the liver (fibrosis tissue extending out from the portal areas but not reaching the central vein) shall be paid a further sum of \$30,000 as compensation for damages at this Level. In the event that in the opinion of an independent physician biopsies are medically contraindicated for a particular Class Member, and provided that the Class Member has met or meets the protocol for interferon treatment that Class Member will be deemed to have met the requirements of Level 2. A Class Member may elect to forego compensation of \$30,000 at this Level and seek the damages set out in paragraph 17 if the Class Member is Totally Disabled;
  - d) Level 4 - all Class Members who demonstrate stage 3 fibrosis of the liver (fibrous bands extending from portal triad to central vein but not reaching other portal triads (portal to central bridging)) shall be entitled to seek the damages set forth in paragraph 17;
  - e) Level 5 - all Class Members who demonstrate cirrhosis (laparoscopic diagnosis or stage 4 fibrosis (fibrous bands from portal areas to portal areas with the formation of cirrhosis (portal to portal bridging with nodular regeneration)) or porphyria cutanea tarda attributable to HCV shall be paid the further sum of \$85,000 as compensation for general damages and shall be entitled to seek the damages set forth in paragraph 17;

- f) Level 6 - all Class Members who demonstrate decompensation of the liver, hepatocellular cancer, thrombocytopenia (low platelets), B-cell lymphoma or mixed cryoglobulinemia attributable to HCV shall be paid the further sum of \$100,000 as compensation for general damages and shall be entitled to seek the damages set forth in paragraph 17; and,
  - g) Level 7 - Interferon or Equivalent Treatment - all Class Members who undergo Interferon or equivalent treatment shall be paid the further sum of \$1,000 for each completed month of treatment as compensation for general damages.
15. Payments made pursuant to paragraph 14, other than payments under paragraphs 14(f) and 14(g) shall be paid at 70% of their value, subject to being varied in whole or in part in accordance with this agreement.
16. Except for Level 7, if a Class Member qualifies at any level, she or he is entitled to the payments at all prior levels.

#### LOSS OF INCOME OR COST OF REPLACEMENT SERVICES IN THE HOME

17. All Class Members who demonstrate stage 3 fibrosis or more severe HCV disease process or who make the election particularized in paragraph 14(c) and whose infection with HCV caused or materially contributed to loss of income or who are unable because of HCV to perform services in the home shall be entitled to recover from the Fund payment for these losses. The payments under this paragraph to be initially made to the Class Member shall be subject to the following terms and conditions:
- a) earned income is deemed to terminate no later than at age 65;
  - b) the maximum gross income for the purpose of calculating income loss is \$75,000;
  - c) a person who was not working prior to his or her infection shall *prima facie* be presumed to have earned a gross income equivalent to the average industrial wage in Canada for the Class Member's age group commencing at age 18, which is presumed to be the time he or she would have entered the work force. Notwithstanding the presumption pertaining to average industrial age, such persons may adduce evidence that his or her gross income would have been greater than the average industrial wage in Canada but for his or her infection;
  - d) the following amounts will be deducted from gross income to calculate loss of income:
    - i) Income tax and all other payroll deductions based on the average income tax and payroll deductions that would have been payable

If he or she had been working unless exceptional circumstances dictate otherwise;

- ii) Canada or Quebec Pension Plan payments to which the Class Member is or was eligible;
  - iii) Employment or Unemployment Insurance payments to which the Class Member is or was eligible;
  - iv) sickness, accident or disability income replacement payments to which the Class Member is or was eligible; and,
  - v) HIV Emergency Assistance Plan and HIV Multi Provincial Territorial Assistance Plan ("MPTAP") payments to which the Class Member is or was eligible;
- e) after deduction of the amounts set forth in 17(d), the Class Member shall recover 70% of the established income loss, payable monthly; and
- f) cost of replacement services in the home shall be valued at \$12 per hour to a maximum of \$240 per week.
18. The restrictions set forth in 17(b) and 17(a) above are subject to being varied in whole or in part as particularized in this agreement.
19. A Class Member is entitled to compensation for loss of income or costs of replacement services in the home, but not both.

#### ESTATE CLAIMS

20. If a Class Member died prior to January 1, 1999 and if HCV caused or materially contributed to his or her death, his or her Estate shall be entitled to recover from the Fund \$50,000 in lieu of his or her damages; however, the Estate of a Class Member who is a hemophiliac and who died prior to January 1, 1999 may elect to recover either \$30,000 without proof that HCV caused or materially contributed to his or her death or \$50,000 with proof that HCV caused or materially contributed to his or her death, but not both.

#### FUNERAL COSTS

21. If a Class Member died prior to January 1, 1999 or dies on or after January 1, 1999 and if HCV caused or materially contributed to his or her death, the estate of the deceased Class Member or the person who has paid the funeral expenses is entitled to recover from the Fund all uninsured funeral costs to a maximum of \$5,000.



#### LOSS OF CARE, GUIDANCE AND COMPANIONSHIP

22. If a Class Member died prior to January 1, 1999 or dies on or after January 1, 1999 and if HCV caused or materially contributed to his or her death, the spouse, common law spouse, partner, children, partners and siblings of the deceased Class Member ("Family Members") shall be paid from the Fund the following amounts for their loss of care, companionship and guidance:
- a) \$25,000. for the spouse, or common law spouse, or partner of the deceased Class Member;
  - b) \$10,000. for the child of the deceased Class Member who is under the age of 21 as at the date of death of the Class Member;
  - c) \$5,000. for each child of the deceased Class Member who is the age of 21 or older as at the date of death of the Class Member;
  - d) \$5,000. for each parent of the deceased Class Member; and,
  - e) \$5,000. for each sibling of the deceased Class Member.

#### LOSS OF SUPPORT AND COST OF REPLACEMENT SERVICES IN THE HOME

23. If a Class Member died prior to January 1, 1999 or dies after January 1, 1999 and if HCV caused or materially contributed to his or her death, the spouse, common law spouse, partner, children and parents of the deceased Class Member ("Dependents") may recover from the Fund their damages for loss of support or cost of replacement services in the home. The amounts under this paragraph shall be subject to the following conditions:
- a) the deceased Class Member's loss of income shall be calculated pursuant to paragraph 17(a) to 17(d) as "disposable income" or under paragraph 17(f);
  - b) the following amounts will be deducted from the deceased Class Member's disposable income:
    - i) 30% of the deceased Class Member's disposable income representing his or her personal consumption;
    - ii) Canada or Quebec Pension Plan payments to which the Dependents of the deceased Class Member are eligible as a result of the death of the deceased Class Member;
    - iii) HIV Emergency Assistance Plan and HIV Multi Provincial Territorial Assistance Plan (MPTAP) payments to which the Dependents of the deceased Class Member are eligible as a result of the death of the Class Member;

- c) after deduction of the amounts particularized in paragraph 23(b), the Dependents of the deceased Class Member shall recover 70% of the established loss of support and the resulting amount shall be allocated 5% to each dependent child and each depended parent and the balance to the spouse, common law spouse or partner,
  - d) cost of replacement services in the home shall be valued at \$12 per hour to a maximum of \$240 per week. There shall be no double recovery for cost of replacement services in the home and care costs.
24. The restrictions set forth in paragraphs 17(b) and 17(e) and 23(c) are subject to being varied in whole or in part set as set out in this agreement.
25. The amounts awarded under this section whether or not varied may be re-adjusted from time to time, in the event that there is a material change in circumstances but not more frequently than every two years after the initial payment.

#### UNINSURED MEDICATION AND TREATMENT COSTS

26. A Class Member may recover from the Fund all past and future uninsured generally accepted medication and treatment costs prescribed by a physician and incurred in Canada for HCV not covered by the FPT Government health care plans or any other health care plan. If a Class Member does not reside in Canada, he or she may recover uninsured medication and treatment costs in an amount equal to the costs which would have been incurred if the expenditure occurred in Canada. If a Class Member dies during the term of the Compensation Plan, these uninsured medication and treatment costs may be recovered by his or her Estate.

#### CARE COSTS

27. If a Class Member has incurred care costs and if HCV caused or materially contributed to the need for care, he or she may recover these reasonable costs from the Fund, subject to the following limitations:
- a) care costs will only be paid to those Class Members who meet the criteria particularized in paragraph 14(f) (Level 6);
  - b) care costs will be paid to a maximum of \$50,000 per year;
  - c) care costs must be supported by the recommendations of a treating physician;
  - d) care costs shall not include reasonably available services covered by FPT Government health care plan or services to which the Class Member is eligible under any private insurance plan; and,

- e) care costs shall not include services for which the Class Member has received compensation for cost of replacement services in the home pursuant to paragraph 17(f). There shall be no double recovery for cost of replacement services in the home and care costs.

#### OUT-OF-POCKET EXPENSES

- 28. If a Class Member has incurred out-of-pocket expenses and if HCV caused or materially contributed to the need for these out-of-pocket expenses, he or she may recover from the Fund these expenses, except those expense covered by FPT Government health care plans or by any private insurance plan benefits to which the Class Member or guardian is or was eligible. In case of death of the Class Member during the currency of the Compensation Plan, these amounts may be recovered by his or her estate. Out-of-pocket expenses shall be limited to a list of out-of-pocket expenses to be agreed to and to include travel expenses, hotel expenses, telephone expenses and other similar expenses attributable to seeking medical advise or treatment of the Class Member's infection with HCV and reasonable medical costs incurred in establishing a claim. The treasury board guidelines shall establish the maximum amounts payable for items particularized therein.

#### GENERAL PROVISIONS

##### ADMINISTRATION

- 29. The parties will develop an administrative plan jointly. It must include a claims processing mechanism and a dispute resolution mechanism.

##### INFLATION

- 30. All amounts recited in the Compensation Plan shall be adjusted annually by the increase in the Consumer Price Index. The first adjustment shall occur as at January 1, 2000.

##### DUE DATE FOR PAYMENTS

- 31. Payments under this agreement become due as of the date of application for payment or as of the date of reassessment and except as provided expressly, payments made under this agreement will not include interest.

##### PERIODIC ASSESSMENTS OF DAMAGES

- 32. A Class Member or his or her Dependents may have their damages particularized in paragraph 17 or 23 assessed periodically but not more frequently than every two years, unless exceptional circumstances dictate otherwise. Entitlement to compensation arises when the application and all necessary proof is completed.

#### **INCOME TAX**

33. No amount paid to a Class Member or to his or her Dependents or to a Family Member under the Compensation Plan shall be subject to income tax. An advance ruling from Revenue Canada and any other applicable provincial income taxing authority will be obtained by the FPT Governments to this effect prior to the commencement of the Compensation Plan. The Compensation Plan is based on the premise that compensation received by a Class Member or his Dependents or a Family Member will not be taxable.

#### **SOCIAL BENEFITS**

34. Payments made under the Compensation Plan shall not affect the entitlement of a Class Member or his or her Dependents or a Family Member to social benefits such as drug benefits, employment insurance, social assistance, etc., as was the case in the MPTAP, provided that the payment in any particular year does not exceed \$30,000.

#### **SUBROGATION**

35. No subrogated claims asserted by the FPT Governments or any other subrogated claims will be paid out of the Fund.

#### **LIFE INSURANCE**

36. No life insurance payments received by a Class Member or his or her Dependents or Family Members or his or her Estates shall be taken into account for any purpose.

#### **COURT APPROVAL AND SUPERVISION OF THE COMPENSATION PLAN**

37. The Compensation Plan shall come into force upon approval without any material differences by the superior courts of the provinces of British Columbia, Quebec and Ontario.
38. No changes or modifications to the Compensation Plan shall be made unless they are approved without any material differences by the superior courts of the provinces of British Columbia, Quebec and Ontario.

#### **PERIODIC REASSESSMENT OF THE FUND**

39. The financial viability of the Fund will be assessed every 3 years. The purpose of the periodic assessment is twofold: first, to determine the overall viability of the Fund to satisfy all future claims on the Fund, and, second, to determine if removal of the restrictions in whole or in part set forth in paragraphs 15, 17(b), 17(e) and 23(c) are reasonable and, if so, the amount by which the restrictions should be varied or removed.

#### REMOVAL OF COMPENSATION RESTRICTIONS

40. If, as a result of the periodic assessment of the Fund, it is determined to be reasonable to remove the restrictions, in whole or in part set forth in paragraphs 15, 17(b), 17(e) and 23(c) the restrictions will be varied or removed in the following order of priority:
- a) first, the restriction of 70% of the damages payable under paragraph 15 will be removed and those Class Members or Dependents who were subject to a percentage restriction on their recovery under paragraphs 15 shall recover retroactively to the same extent plus interest at the prime rate of interest charged by Class A banks from time to time;
  - b) next, the restrictions of 70% of net income and net loss of support set forth in paragraphs 17(e) and 23(c) will be removed and those Class Members or Dependents who were subject to such restriction shall recover retroactively to the same extent plus interest at the prime rate of interest charged by Class A banks from time to time; and,
  - c) finally, the restriction of \$75,000 on gross income for the purposes of calculating income loss and loss particularized in paragraph 17(b) will be lifted in whole or in part up to the actual gross income and those Class Members or Dependents who were subject to this restriction under paragraphs 17(b) and 23(a) shall recover retroactively to the same extent plus interest at the prime rate of interest charged by Class A banks from time to time.
41. In the event that the restrictions have been fully removed pursuant to paragraph 40 and the payments under the Compensation Plan have been fully met at the termination of the Compensation Plan and there are monies remaining in the Fund then all such remaining monies in the Fund shall be remitted to the FPT Governments.
42. If as a result of the periodic assessment of the Fund it appears that the Fund may not be sufficient to satisfy future claims, the court may adjust the Compensation Plan.
43. The Class Members bear the risk of any insufficiency of the Fund.

#### RELEASES

The principle is that the FPT Governments be released from any direct or indirect liability by reason of the Class Member's having received Blood. To that end, the Governments require a release of the FPT Governments from the Class Members as well as acknowledgement that the settlement herein constitutes a sufficient satisfaction of any claim that the Class Members may have by reason of any judgement based on their receipt of Blood. Further, the governments require that the Class Members will not make any claim against hospitals or doctors or manufacturers of blood products or derivatives. Finally,

to the extent that the Class Members wish to make a claim against the CRC or seek to enforce any judgement in excess of the value of the Red Cross

44. The parties agree that they will not apply for class counsel fees based on a percentage of the damages recovered under this agreement.
45. Reasonable counsel fees shall be agreed at a lump sum plus GST plus reasonable disbursements subject to Court approval, and if agreement cannot be reached in an amount set by the appropriate Court in accord with paragraph 44.

#### ENTIRE AGREEMENT

46. This is the entire agreement between the parties.

61

# CAMP CHURCH & ASSOCIATES

## BARRISTERS

J.J. Camp, Q.C.\*  
David P. Church\*  
Joe Fiorante\*  
Andrew J. Pearson  
Sharon D. Matthews  
Ian G. Schildt

This is Exhibit "III" referred to in the  
affidavit of J.J. Camp  
made before me on May 23, 1999.  
A Commissioner for taking Affidavits  
For British Columbia

4th Floor, Randall Building  
555 West Georgia Street  
Vancouver, B.C.  
Canada V6B 1Z5

Telephone: (604) 689-7555

Facsimile: (604) 689-7554

FILE REF: 96015/001

December 9, 1998

Gignac, Sutts  
Attention: Harvey T. Strosberg, Q.C.

Pierre Lavigne

Marchand, Magnan, Melançon, Forget  
Attention: Michel Savonitto

Blake Cassels & Graydon  
Attention: Bonnie Tough

Dear Sirs:

### Re: Hepatitis C Negotiations

In preparation for our meeting tomorrow, the following are major issues to be addressed:

1. definition of "materially contributed";
2. paragraph 3(c) and paragraph 5(c) - requirement that the class member declare that they did not receive blood outside the class period (I suspect that this change is unintended at least so far as its scope is concerned);
3. paragraph 7 - this change should be read in conjunction with paragraphs 3(c) and 5(c) and with paragraph 5 of our last offer;
4. paragraph 10(a) - the offer of \$240,000 for the estate of the HIV secondarily infected;
5. paragraph 15 - 70% initial payment of general damages except levels 6 and 7; and
6. paragraph 43 - release language.

The following are more minor issues to be addressed at our meeting tomorrow:

1. definition of "blood" supplied by the CRC - blood was also supplied by hospitals - the listed exceptions in Schedule "A" should be incorporated in the definition of blood and it should come out of paragraph 2(a);
2. definition of "total disability" - the FPT governments have reverted to the language proposed for exigent claims;

ODMAGRPWISCC DCM CC POSSDATA 563071

\* Denotes Law Corporation



## CAMP CHURCH & ASSOCIATES

3. paragraph 2(b) and (c) - I think we have overlooked the possibility of transmission of secondary HCV by "household means" such as the sharing of toothbrushes, etc. - please note the FPT governments have adopted our language;
4. paragraph 6 - what is the purpose of adding the last nine words;
5. paragraph 10(b) - the persons not bound by the settlement are defined too broadly because of the reference to Schedule "A" - please note that the FPT governments have adopted our language;
6. paragraph 11 - there is no such thing as "Long Term Canada Savings Bonds" - I assume we meant to say "Long Term Government of Canada Bonds" - please note that the FPT governments have adopted our language;
7. paragraph 14(c) - the FPT governments have not adopted our language and there is a typo - the word "Level 2" should read "Level 3";
8. paragraph 14(e) - the language needs to be cleaned up - please note that the FPT governments have adopted our language;
9. paragraph 20 - an election has been offered to the hemophiliacs;
10. paragraph 25 - this paragraph has been added;
11. paragraph 31 - this paragraph has been added;
12. paragraph 32 - the reference to "paragraph 17 or 23" should be expanded to read "paragraphs 14, 17, 23, 26, 27 and 28";
13. paragraph 33 - some of our language in the last sentence has been left out;
14. paragraph 34 - the language has been refined with a cap of \$30,000 imposed;
15. paragraph 39 - a reference to paragraph 23(a) should be added;
16. paragraph 40 - a reference to paragraph 23(a) should be added;
17. paragraph 44 - the heading "FEES" should be created; and
18. paragraph 45 - this paragraph has been added.

There will doubtless be other issues that I have overlooked.

Yours truly,

CAMP CHURCH & ASSOCIATES

By:

J.J. Camp



JJC:hp

62

31.1999 11:14AM

DEPT OF JUSTICE

NO. 606 P. 2/67

Department of Justice  
Canada

Ministère de la Justice  
Canada

Room 2386, East Memorial Building  
284 Wellington Street  
Ottawa, Canada  
K1A 0H9

Telephone: 613-857-4801  
Facsimile: 613-852-8713

This is Exhibit - KKK - referred to in the  
affidavit of J.J. Camp  
made before me on March 31, 1999

A Commissioner for taking Affidavits  
For British Columbia

March 31, 1999

BY FAX

Camp, Church and Associates  
4th Floor, Randall Building  
555 Georgia Street West  
Vancouver, British Columbia  
V6B 1Z5

Attention: J.J. Camp, Q.C.

Dear Mr. Camp :

Re: Hepatitis C Negotiations  
Our File No. 346006

Please find enclosed a draft final agreement for your review and comment.

In addition, we asked Dr. Sherman to review the medical aspects of our draft final agreement. Here are some of his comments.

1. "Compensable HCV Drug Therapy" - As we understand, the intent was to provide compensation for the discomfort which may occur during therapy with ribavirin. Hypothetically, a drug could be introduced which was easy to take, caused no side effects and was equally effective or better. We note Dr. Heathcotes's comment as to the likelihood for a side-effect free treatment in five years.
2. "HCV antibody test" - Dr. Sherman is of the view that ELISA II (introduced in 1992) is sufficient for our purposes. This may alleviate the need for re-testing.
3. The PCR test should be limited in that only the most sensitive available test should be accepted. Only commercially-available assays should be accepted, because only these have acceptable quality control and internal and external validity. Currently these include the Roche Amplicor test, which measures down to about 200,000 particle/ml. Clearly this is

inadequate, since some patients will be positive by the Amplicor test, but negative by the Chiron test. Chiron will shortly introduce a new test, which will have sensitivity equivalent to the Roche test. At that point, that test can also be used. Roche have another test, which gives a quantitative answer whereas the Amplicor test only gives a yes/no answer. This test (Roche Monitor) is also highly sensitive and can also be accepted.

4. With respect to paragraph 4.2(b) which deals with proof of infection for estates, additional evidence could be :

(a) a liver biopsy consistent with Hepatitis C in the absence of any other cause of chronic hepatitis;

(b) an episode of jaundice within 3 months of a transfusion in the absence of any cause; or,

(c) a diagnosis of cirrhosis in the absence of any other cause.

5. Dr. Sherman is generally of the view that there is too much reliance on biopsies; he puts the matter thusly:

"The biopsy descriptions of the degree of fibrosis are unusable. Perhaps this could best be illustrated by some examples. Liver biopsy has about a 30 % chance of sampling error, usually because of samples which are too small. Even cirrhosis can be missed. Thus it is possible that a patient may be classified as having stage 2 fibrosis on the first biopsy, and stage 1 fibrosis at a later stage. The use of biopsy appearances may also have the unintended consequences that patients request biopsies to determine whether they qualify for additional compensation. It is possible that patients will land up having several biopsies in an attempt to document progression of disease. At present, most patients have a single biopsy, a few have two, and very few have three. Under the proposed scheme patients may have 5-6 or more biopsies. I must reiterate that liver biopsy is not without risk. The more that are done, the more the risk of a serious complication, even death. This is particularly true if biopsies are being done by those who are less than expert. And this will happen because there are not enough experts around to do all the biopsies that this proposal will require. Furthermore, the more non-experts doing biopsies, the more often sampling error will be a problem. It is very common for me to find, after reviewing biopsies done elsewhere, that the material is inadequate. What then? Another biopsy?

6. Dr. Sherman is also concerned about the description of fibrosis :

"The descriptions of the extent of fibrosis representing stage 2 and 3 would not be recognized by any reputable pathologist. When fibrosis occurs, the first thing to happen is that the portal tract enlarges with fibrosis (stage 1). Then thin fibrous bands extend out reaching towards but not linking with neighbouring portal tracts (stage 2). Neighbouring portal tracts become linked by fibrosis (stage 3) before fibrosis bridges the portal tract to the central vein (more properly called the terminal vein). Cirrhosis is present when the extent of this fibrous expansion is such that a number of portal tracts are linked to form a complete circle of fibrosis

However, symptomatic disease may be compensable. A distinction should be made between mild symptoms and severe symptoms, which can be life threatening, such as renal failure (this may be different than the renal failure due to glomerulonephritis).

11. Low platelets should not be compensated at the same level as hepatic decompensation, unless the intention is that low platelets indicate liver decompensation (which they do not). For most patients low platelets will be a manifestation of cirrhosis, and should be compensated as such (level 5). Only rarely will low platelets be present in the absence of cirrhosis. Most of these patients will be asymptomatic. It will be exceptionally rare for low platelets to cause bleeding.

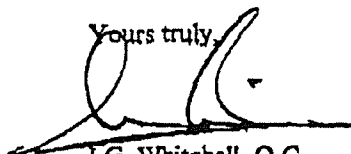
We have incorporated Dr. Sherman's comments in our draft where possible; however, we recognize that most of them have not been discussed between the parties. We suspect that a conversation between Dr. Sherman and Dr. Anderson might be the most useful way of approaching this issue. We believe we should discuss this at our meeting next Thursday in Toronto with a view to finalizing the agreement.

In addition to Dr. Sherman's comments, we also note Ms. Matthews' information from the March meeting of CASL and suggest that these suggestions should be considered between the experts.

You will also note that we have provided for the Fund to earn interest at the 90-day Treasury Bill rate. Our client must be in a position to calculate actual interest earned according to an actual instrument. The quarterly adjustment to the rate will address your concerns regarding inflation.

Our intention is to work on the hemophilia plan once we have finalized the transfused plan.

Yours truly,



J.G. Whitehall, Q.C.  
Chief General Counsel

c: H. Strosberg, Q.C.  
P. Lavigne  
B. Tough  
C. Prowse

63

# GIGNAC, SUTTS

BARRISTERS & SOLICITORS

COUNSEL  
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Direct Dial (519) 561-6228  
Direct Fax (519) 258-9503

This is Exhibit "LLL" referred to in the  
affidavit of J. Camp  
made before me on May 23, 1999

A Commissioner for taking Affidavits  
for British Columbia

May 5, 1999

## VIA FACSIMILE

Ivan G. Whitehall, Q.C.  
Room 2341  
284 Wellington Street  
East Memorial Building  
Ottawa, Ontario K1A 0H8  
Canada

Mr Clifton D. Prowse  
British Columbia Ministry of the  
Attorney General  
Legal Services Branch  
1301-865 Howe Street  
Vancouver, BC V6Z 2H4

Dear Sirs:

Parsons et al. v. The Canadian Red Cross Society  
Court File No.: 98-CV-141369

I have now had an opportunity to consider the  
documents which were faxed to us on Thursday, April 29.

I begin by reciting history. We agreed in the  
"Framework Agreement" that the \$1,118,000,000 would attract  
monthly interest at the long-term Government of Canada bond  
rate.

Mr. Whitehall explained at our meeting at McCarthy  
Tetrault that the FPT Governments would hold the \$1,118,000,000  
and wished to invest by purchasing Three Month Federal  
Government Treasury Bills ("T-bills"), a readily accessible  
investment, to match T-bill rates which it wished to pay instead  
of the long-term Government of Canada bond rate. This seemed

## VIA FAX ONLY TO

NAME: Ivan G. Whitehall  
FAX: 613-952-8713  
PHONE: 613-957-4801  
NAME: Clifton D. Prowse  
FAX: 604-660-2636  
PHONE: 604-660-3091  
PGS: 4 TIME: AM / PM

This message is intended for the use of the individual(s) to  
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communication in error, please destroy it and notify us by  
telephone immediately.

- 2 -

May 5, 1999

reasonable to me because the FPT Governments were to hold the monies.

I told Mr. Whitehall that (subject to court approval) I would accept three month T-bill rates and interest compounded quarterly if all other terms were as we had proposed. This concession had a value of 75 to 125 basis points per year.

Since then the following evolution has occurred in your drafts:

- (a) a trustee has been proposed to hold the settlement monies;
- (b) the FPT Governments reserve to themselves the right to earn a spread on the settlement monies by investing in bonds or otherwise directing investment policy;
- (c) some costs of administration are to be passed to the victims' fund;
- (d) the scope of the release form has been substantially expanded;
- (e) an indemnity is sought from victims relating to family claims;
- (f) the right to appeal quantum from a referee's decision has been eliminated;
- (g) there is no fixed percentage to be paid by any FPT Government raising the prospect of several liability for an unascertained amount;
- (h) no FPT Government has given a covenant to pay a fixed amount to the victim because they are not parties to the Funding Agreement; and
- (i) a Funding Agreement has been produced that is so convoluted and complex as to be a recipe for costly litigation (if the victims were in a position to enforce it).

This approach is utterly unacceptable and represents an unwarranted dilution of the terms necessary for counsel's recommendation and court approval.



- 3 -

May 5, 1999

Given the passage of time and the variation in the FPT Governments' position, I am not prepared to accept the Funding Agreement.

I propose the following approach:

1. The FPT Governments will, in the Settlement Agreement, covenant to pay \$1,118,000,000 plus interest from April 1, 1998 to the date of payment to the Trustee at the three month T-bill rates compounded quarterly less expenses ("Settlement Amount").
2. The Federal Government will pay forthwith upon Court approval, 72.7273% of the Settlement Amount to a Trustee appointed by the Courts.
3. The Provincial and Territorial Governments will agree on a fixed percentage of the balance of the Settlement Amount to be paid by each Government to the Trustee and each Government will guarantee only the fixed percentage attributed to it.
4. The Trustee, on the direction of investment managers approved by the Courts, will invest the monies it has on hand. Whatever interest accrues will become part of the Settlement Amount. This will create a yield for the victims in excess of the T-bill rate.
5. Any Provincial or Territorial Government which cannot or will not pay their share immediately will be charged interest at the T-bill rate to be compounded and accrued or paid to the Trustee quarterly. I understood that Ontario has allocated \$130,000,000 more or less. I am hopeful that Premier Harris will ensure that Ontario's percentage is immediately paid over to the Trustee.
6. Monthly, the Administrator, on 10 days' notice, will requisition such monies as it requires. If there is any dispute about the reasonableness of the requisition, a motion may be made to any of the courts for advice and directions.
7. How the FPT Governments adjust the payments among themselves is for the FPT Governments and the victims need have no concern with this.
8. There will be no indemnity given in any release. The FPT Governments can be protected by a clause in the Settlement Agreement which provides that if any class member opts out, any

- 4 -

May 5, 1999

judgment or approved settlement is paid out of the Settlement Amount.

9. There must be the right to appeal quantum from a referee's decision. There is no risk that these appeals will overburden the court system. There are few pending appeals in the Ontario Court of Appeal dealing only with quantum of damages.

Yours very truly,

*Harvey T. Strosberg*

Harvey T. Strosberg

HTS/ba

cc: Daryl McLean

Fax: (416) 868-0673

Tel: (416) 601-7700

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MAY. 6. 1999 4:34PM JUSTICE (613)952-8713

NO.218 P.2/5



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May 6, 1999

BY FAX

GIGNAC, SUTTS  
P.O. Box 670  
600 Westcourt Place  
251 Goyeau Street  
Windsor, ON  
N9A 6V4

Attention: Mr. Harvey Strosberg, Q.C.

Dear Mr. Strosberg:

Re: Hepatitis C Negotiations  
Our File No. 346006

I have your letter of May 5, 1999.

I too wish to start with some history. A year ago FTP governments announced that they would compensate persons who were infected with HCV as a result of having received blood during the so called 1986-90 window period.<sup>1</sup> The governments have also announced at the same time that the cost of the HIV secondary program would have to be covered within the \$1.1 Billion. The announcement was based on a cohort number that was roughly double of the estimate of the plaintiffs or indeed the now current estimate of the number of persons who were infected with HCV. The governments have moved significantly from the announced position in several respects.<sup>2</sup> However, there was never any question that the basic compensation would exceed the present value of \$1.1 Billion. Interest was discussed only because it was recognized that payments would have to be made over several years and therefore we had to make provision to cover the cost of inflation. There was never any suggestion or agreement by governments that the amount

<sup>1</sup> For the sake of convenience I have not referred to the hemophiliac group.

<sup>2</sup> e.g. by including in the settlement amount interest from April 1, 1998, by agreeing not to charge all of their HIV secondary program costs against the settlement fund, and by adding \$18 M in lieu of the plaintiffs' CCAA claims.

This is Exhibit "AAA" referred to in the  
affidavit of J. J. Campbell

made before me on May 22, 1999

A Commissioner for Taking Affidavits  
For British Columbia

- 2 -

of compensation to the plaintiffs should exceed \$1.1 billion. Of course that is precisely what you intend to achieve by your latest suggestion. That said and speaking for Canada only we are prepared to work with you toward the solution you suggested in your letter subject to you agreeing to the following. Assuming Canada would pay its share of the Settlement Amount upon the agreements having been approved by the courts and assuming that the plaintiffs may give investment instructions to the trustee in respect of the amounts advanced by Canada (Canada funds);

- The Canada funds will only be invested in pre-agreed and court approved investments;
- Interest earned will be part of the settlement fund;
- The Fund will pay for Canada's portion of the HIV secondary program (the program pays for partners rather than spouses);
- The Fund will pay for all administrative costs associated with the plan and Canada's portion of the Trust;
- Canada will not guarantee an interest rate;
- Once Canada pays its funds she will be released of all liability and the action against Canada will be dismissed.

As you no doubt appreciate, not all jurisdictions will want to follow this method of meeting their obligations. Most territorial and provincial governments do not wish to make their payments up front. Further, these governments insist that they will only guarantee interest on the basis set out in the Funding Agreement that is, the three-month federal Treasury Bill rate, because that rate will ensure that inflation is taken into account and at the same time provide the requisite level of security to the governments that fluctuation in interest rates will not adversely affect the fund and hence their obligations to the plaintiffs. I also advised you however, that some governments may wish to recover the additional costs that were not included in the original announcement. It is for that reason that they wished to reserve the right to invest their portion of the settlement fund. These concerns remain on the part of the provincial and territorial governments.

However, since Canada's portion is 8/11 of the total settlement amount, this should give you sufficient flexibility to gain additional funds for the plaintiffs and it should provide the basis on which to accommodate the provincial and territorial concerns.

You suggest in your letter that the plaintiffs appear to have no input in the running of the trust. In our view the present shape of the agreements was as a result of our discussions, specifically on April 9. In our view the Fund Counsel, and the Joint Committee have the requisite powers to safeguard the interests of the class members. However, I am prepared to work with you to resolve this issue. For example, if you wish to have the plaintiffs as parties to the funding agreement, I have no objection to that. I am also prepared to work with you to give the required assurances that the governments will meet the commitments they will undertake in the Settlement Agreement.

I next turn to the other items that appear to be objectionable:

1. Administration costs. We drew a distinction between costs that relate to the administration of the settlement and costs that are attributable to the governments' particular way of making

- 3 -

their contributions, that is, keeping fourteen separate accounts. The former is properly a charge against the settlement funds. The latter is not. I think you will agree that this is fair;

2. Indemnity re Family claims. As a matter of policy you decided that Family members should be compensated on a limited basis. We agreed. However, we are concerned that absent some compensation, the *Family Law Act* claims remain, and they will bring actions against the various governments. We have stated all along that this settlement must be all inclusive. Therefor the agreement provides for indemnity in the event your opinion turns out to be wrong. I may say that it is also consistent with the purpose of the "Agreement" as set out in para. 2.01. As I see it, it is there to make explicit that which is already implicit;
3. The right to appeal. Again the question of administrative costs has been an on going concern. We have reluctantly agreed with you to proceed by way of reference instead of compulsory arbitration. We have said consistently that the administration of this program should not be excessively costly. The moneys were intended for the victims and not for legal fees. The limitation on appeals is a way to lower the costs. We are prepared to seek a mutually satisfactory resolution to this issue, but some jurisdictions are sufficiently concerned that intransigence cannot be the answer;
4. Fixed percentage. We are of the view that the liability of each government is fixed by the formula and is ascertainable at any given time. Tables are not a practical solution. Population size does not accurately reflect the liability of the various territorial and provincial governments. The basis on which governments (other than the Government of Canada) have agreed to make their contribution is the ordinary residence of the primarily infected person at the time of the infection (that determines liability for derivative claims as well). While the liability is fixed and is ascertainable at any particular time, it will fluctuate from time to time. Hence, the formula is a better way of addressing this issue than some presently fixed table that would have to be amended from time to time. However, if you have some suggestions, I would be glad to have them;
5. Covenant by governments. We believe that the agreement to pay is in the Settlement Agreement. In any event this is a drafting issue;
6. Complexity. We do not pretend that this is a simple agreement. However, the complexities of the situation demand this agreement.

We have also received some comments from Ms. Matthews. Most of the comments are drafting comments and I will not comment in this letter. The two principal issues are the language Drs. Sherman and Anderson appear to have agreed on. I am informed that there is no consensus as reported by Ms. Matthews. I am therefore suggesting that Ms. Matthews, Ms. Moore and the two doctors meet to resolve this question on May 12 in Toronto.

As for the release language, all governments will insist that all 1986-90 HCV litigation must either come to an end or be covered by the settlement fund whether directly against the governments or indirectly through third parties, such as hospitals or doctors. If that cannot be achieved then we

- 4 -

have no interest in settling these lawsuits only to litigate the same issues at a later date. Therefore, we need to find language that addresses our concerns.

I believe it is possible to reach an agreement given the substantial change in the position of the Government of Canada. However, it is the end of the line and you will have to ask yourself whether you are prepared to make some accommodations as well. If you are then we should be able to conclude the agreement subject to drafting. So as to prepare for the meeting on the 10th and in order to receive instruction from my clients I would appreciate if you could respond to me as soon as you can. I have a teleconference scheduled with my clients tomorrow at noon Toronto time.

As you are aware, I suggested that we meet in Vancouver on May 10 in order to conclude this agreement if that is possible. I understand that you are available on the 10th. If we want to meet the June 15 deadline then an agreement on May 10 is absolutely essential.

Yours truly

*for Catharine Moore*

Ivan G. Whitehall, Q.C.  
Chief General Counsel

cc: J.J. Camp  
P. Lavigne  
Bonnie Tough  
Clif Prowse

65



JUN. 11. 1999 9:42AM JUSTICE (613)952-8713

NO. 676 P.2/2



Department of Justice  
Canada

Ministère de la Justice  
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284 Wellington Street  
Ottawa, ON K1A 0H8

Telephone: 613-957-4801  
Facsimile: 613-952-8713

June 10, 1999

BY FAX

CAMP, CHURCH and ASSOCIATES  
4th Floor, Randall Building  
555 Georgia Street West  
Vancouver, B.C.  
V6B 1Z5

Attention: Mr. J.J. Camp, Q.C.

Dear Mr. Camp:

Re: Hepatitis C Negotiations  
Our File No. 346006

You asked about the taxes payable on the class counsel fee, specifically G.S.T and relevant provincial taxes and whether governments would be prepared to waive this.

While I cannot speak for provincial and territorial governments on this matter, I believe that my client would not be prepared to make this concession. As you point out, the amounts are significant and governments have already made a substantial contribution to this exercise.

Yours truly,

I.G. Whitehall, Q.C.  
Chief General Counsel

cc: Clif Prowse

This is Exhibit "NNN" referred to in the  
affidavit of J. Camp

made before me on June 23, 1999

A Commissioner for taking Affidavits  
For British Columbia

66

**CAMP CHURCH & ASSOCIATES**  
BARRISTERS

J.J. Camp, Q.C.\*  
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This is Exhibit "000" referred to in the  
affidavit of J.J. Camp

made before me on 11.22.99

Commissioner for Taking Affidavits  
For British Columbia

FILE REF: 96015/001

August 24, 1999

**BY COURIER**

Department of Justice  
900-840 Howe Street  
Vancouver, BC  
V6Z 2S9

**Attention: Ivan G. Whitehall, Q.C.**

Dear Sir:

**Re: HCV Administration Matters**

I write with respect to the start-up fees and disbursements being generated by Peterson Worldwide("PW"), the administrator we are recommending to the courts. As you know, it has been our position that the FPT Governments are committed to paying start-up costs. This matter has now reached a critical stage.

In our view, it was imperative that the administrator get to work so that we could "hit the deck running" once the settlement was approved by the courts. We understood that the FPT Governments shared this point of view and we understood that the FPT Governments would pay the start-up costs. Hence, we instructed PW to lease space, hire employees, get a Website started, staff a 1-800 number service, prepare protocols, etc., etc. I enclose a sample of some of the recent draft protocol material. As I dictate this, Bonnie Tough, Sharon Matthews, Heather Peterson and the senior staff at PW are meeting in Toronto to draft further protocols and refine the protocols drafted to date. PW have accomplished these tasks at no small cost. Bonnie Tough who has had the principal liaison with PW, advises that their fees and disbursements will soon reach

CAMP CHURCH & ASSOCIATES

\$1,000,000. Needless to say, PW are becoming more and more insistent on getting paid and we, as the negotiating committee who commissioned their work, are becoming more and more embarrassed.

Without doubt, they will soon "lay down tools" and, I suspect, seek legal advice on the subject of recouping their costs. Both of these are "disaster scenarios". On Friday, Aug. 20, 1999, I raised this issue with Clif Prowse and your Mr. John Haig and Michel Lapierre during the afternoon break at court. I realized that Messrs. Haig and Lapierre did not have any authority to deal. Nevertheless, because of the critical nature of this matter, I alerted the Court in oblique terms that this issue was brewing. Obviously, I did not seek any relief.

Please call me to discuss upon receipt of this letter. I realize that we have been trading telephone calls but I thought it best to commit this matter to writing.

Yours truly,

CAMP CHURCH & ASSOCIATES

By:

J.J. Camp

JJC:mf

cc: Bonnie Tough  
Harvey Strosberg, Q.C.  
Michel Savonitto  
Pierre Lavigne

67

09/08/1999 19:28

6846665981

IVAN WHITEHALL

PAGE 02



Department of Justice  
Canada

Ministère de la Justice  
Canada

Room 2341, East Memorial Bldg.  
284 Wellington Street  
Ottawa, Canada  
K1A 0H8

Telephone: 613-957-4801  
Facsimile: 613-952-8713

This is Exhibit "PPP" referred to in the  
affidavit of J.J. Camp  
made before me on Sept. 27, 1999

A Commissioner for taking Affidavits  
For British Columbia

September 8, 1999

By Fax

J.J. Camp, Q.C.  
Camp Church and Associates  
Barristers  
4th Floor, Randall Building  
555 West Georgia Street  
VANCOUVER, BRITISH COLUMBIA  
V6B 1Z5

Dear Mr. Camp:

Re: Hepatitis C Negotiations  
Our file no. 346006

Further to our telephone conversation, I confirm that the federal government will pay the reasonable start-up costs of Peterson Worldwide regardless of whether the settlement is approved to a cap of 8/11ths of \$1.2 million total costs; that is to say a maximum of \$872,727.27.

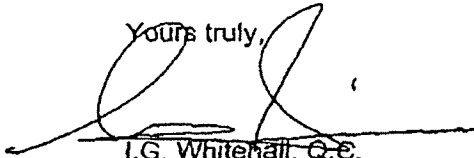
The above is subject to the following conditions: All amounts paid by the federal government will be considered as a disbursement of Class Action Counsel and, to the extent they are paid prior to the approval date, will be part of the "Withheld Amount" as that term is defined in the Funding Agreement. To the extent that this represents an amendment of the existing Agreements, you will agree to such amendments on behalf of the Class Plaintiffs.

Further, in the event that Peterson Worldwide is not approved as Administrator, or if the settlement agreement is not approved, then the work product that has been developed will be transferred to the Government of Canada and will vest in the Government of Canada.

- 2 -

To facilitate payment we ask that you and your co-counsel execute and return to us an original signed copy of this letter agreement. To expedite matters, if you have instructions, we will be content if you sign on behalf of all other Class Counsel as well. Upon receipt of your acknowledgement we will issue cheques to your firm in trust.

Yours truly,



I.G. Whitehall, Q.C.  
Chief General Counsel

IGW:m

c.c. C. Prowse  
H. Strosberg, Q.C.  
P. Lavigne  
B. Tough

68





This is Exhibit • 000 • referred to in the  
affidavit of J.J. Camp  
made before me on NOV 23 19 99  
Commissioner for taking Affidavits  
For British Columbia

November 19, 1999

Via Fax: 604.689.7554

The Hepatitis C January 1, 1986 - July 1, 1990 Class Actions Settlement Fund  
c/o J.J. Camp  
Camp Church & Associates  
4th Floor, Randall Building  
555 West Georgia Street  
Vancouver, BC V6B 1Z5

Re: Hepatitis C Class Actions Settlement Administration Services

Dear Mr. Camp:

Enclosed is our interim billing for services provided for the period from September 1, 1999 through November 15, 1999 in connection with the above matter. Our out-of-pocket expense reimbursement request will be billed separately. Fees (including G.S.T.) for this period totaled \$836,722.88.

Please call me directly at 613.564.7171 if you would like to discuss this billing. We appreciate the opportunity to be of service to you, your colleagues and your clients in this important project.

Sincerely,

A handwritten signature in black ink, appearing to read 'Mark Ramhin', written in a cursive style.

Mark Ramhin

MR:act

Enclosures

**INVOICE**

The Hepatitis C January 1, 1986 - July 1, 1990 Class Actions Settlement Fund  
c/o J.J. Camp  
Camp Church & Associates  
4th Floor, Randall Building  
555 West Georgia Street  
Vancouver, BC V6B 1Z5

**Re: Hepatitis C Class Actions Settlement Administration Services**

For services provided from September 1, 1999 through November 15, 1999 in connection with the above matter. (See attached detail.)

**Professional Services:**

September 1999	\$315,404.00
October 1999	291,174.00
November 1-15, 1999	<u>175,406.00</u>
Fees subtotal:	781,984.00
G.S.T.	<u>54,738.88</u>

**Total Fees and G.S.T. \$836,722.88**

All amounts are stated in Canadian Dollars

Canadian Corporation Number 1334789

**The 1986-1990 Hepatitis C Claims Centre**  
**Billing for the Period September 1, 1999 through September 30, 1999 - Fees**  
*(Canadian Dollars)*

**Project Management**

Name	Experience Level	Hours Worked	Hourly Rate	Fees
Sharon Taulman	Director	14.0	\$ 416	\$ 5,824
Mark Rambin	Principal	148.0	315	46,620
<b>Sub-total</b>		<b>162.0</b>		<b>\$ 52,444</b>

**Systems and Procedures Development**

Name	Experience Level	Hours Worked	Hourly Rate	Fees
Julius Colangelo	Senior Manager	23.0	\$ 280	\$ 6,440
Austin Hale	Senior Manager	187.0	280	46,760
Tony Lackey	Manager	168.0	180	30,240
Alan Stephenson	Senior Consultant	73.5	180	13,230
Robert Rozen	Senior Consultant	120.0	180	21,600
Frank Dong	Senior Consultant	104.0	180	18,720
Ganesh Vijalapura	Senior Consultant	137.5	180	24,760
Jodi England	Senior Consultant	40.0	180	7,200
Ron Neff	Senior Consultant	40.0	180	7,200
Russell Loski	Senior Consultant	10.0	180	1,800
Jodi Barstow	Staff Consultant	181.0	120	21,720
David Grant	Staff Consultant	120.5	120	14,460
<b>Sub-total</b>		<b>1184.5</b>		<b>\$ 214,120</b>

**Facility/Call Centre/Customer Support Operations**

Name	Experience Level	Hours Worked	Hourly Rate	Fees
Robin Coates	Manager	136.0	\$ 180	\$ 24,480
Jennifer Landry	Senior Consultant	15.0	120	1,800
Dariusz Marcinkiewicz	Staff Consultant	18.0	120	2,160
Saeid Fotovat	Senior Consultant	4.0	180	720
Natalie Cloutier	Customer Service	180.3	48	8,652
Lori Myers	Customer Service	55.0	48	2,640
Ruth Rathwell	Customer Service	174.8	48	8,388
<b>Sub-total</b>		<b>583.0</b>		<b>\$ 48,840</b>

<b>Total Hours &amp; Fees</b>		<b>1929.5</b>		<b>\$ 315,404</b>
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**The 1986-1990 Hepatitis C Claims Centre  
Billing for the Period October 1, 1998 through October 31, 1999 - Fees  
(Canadian Dollars)**

**Project Management**

Name	Experience Level	Hours Worked	Hourly Rate	Fees
Bill Jones	Managing Director	14.0	\$ 416	\$ 5,824
Sharon Taulman	Director	21.0	416	8,736
Mark Ramblin	Principal	136.0	315	42,840
<b>Sub-total</b>		<b>171.0</b>		<b>\$ 57,400</b>

**Systems and Procedures Development**

Name	Experience Level	Hours Worked	Hourly Rate	Fees
Julius Colangelo	Senior Manager	3.0	\$ 280	\$ 840
Austin Hale	Senior Manager	179.0	280	50,120
Tony Lackey	Manager	168.0	180	30,240
Nin Chang	Senior Consultant	93.5	180	16,830
Ron Neff	Senior Consultant	152.0	180	27,360
Russell Loski	Senior Consultant	114.0	180	20,520
Charlotte Pragnell	Staff Consultant	48.5	120	5,820
Jodi Barstow	Staff Consultant	168.0	120	19,920
David Grant	Staff Consultant	183.5	120	22,020
<b>Sub-total</b>		<b>1107.5</b>		<b>\$ 193,670</b>

**Facility/Call Centre/Customer Support Operations**

Name	Experience Level	Hours Worked	Hourly Rate	Fees
Joe Patenaude	Manager	80.0	\$ 180	\$ 14,400
Gino Hawley	Senior Consultant	6.0	120	720
Dariusz Marcinkiewicz	Staff Consultant	21.0	120	2,520
Saeid Fotovat	Senior Consultant	4.0	180	720
Natalie Cloutier	Customer Service	182.0	48	7,776
Natalie Girard	Customer Service	120.3	48	5,772
Ruth Rathwell	Customer Service	170.8	48	8,196
<b>Sub-total</b>		<b>564.0</b>		<b>\$ 40,104</b>

<b>Total Hours &amp; Fees</b>		<b>1842.5</b>		<b>\$ 291,174</b>
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**The 1986-1990 Hepatitis C Claims Centre**  
**Billing for the Period November 1, 1999 through November 15, 1999 - Fees**  
*(Canadian Dollars)*

**Project Management**

Name	Experience Level	Hours Worked	Hourly Rate	Fees
Sharon Taulman	Director	2.0	\$ 416	\$ 832
Mark Rambin	Principal	100.0	315	31,500
<b>Sub-total</b>		<b>102.0</b>		<b>\$ 32,332</b>

**Systems and Procedures Development**

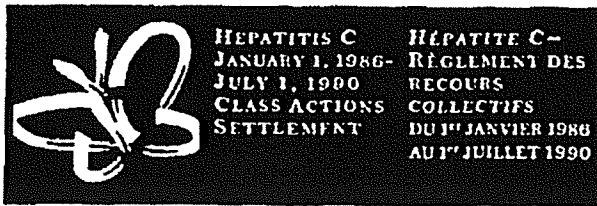
Name	Experience Level	Hours Worked	Hourly Rate	Fees
Austin Hale	Senior Manager	88.0	\$ 280	\$ 24,640
Tony Lackey	Manager	88.0	180	15,840
Nin Chang	Senior Consultant	18.0	180	2,880
Ron Neff	Senior Consultant	56.0	180	10,080
Russ Loski	Senior Consultant	64.0	180	11,520
Robert McFarland	Senior Consultant	90.5	180	16,290
Maryam Kalantar	Senior Consultant	18.0	180	2,880
Fred Koch	Senior Consultant	2.0	180	360
Eric Krause	Senior Consultant	14.0	180	2,520
Jodi Barstow	Staff Consultant	112.0	120	13,440
David Grant	Staff Consultant	120.5	120	14,460
<b>Sub-total</b>		<b>667.0</b>		<b>\$ 114,910</b>

**Facility/Call Centre/Customer Support Operations**

Name	Experience Level	Hours Worked	Hourly Rate	Fees
Joe Patenaude	Manager	88.0	\$ 180	\$ 15,840
Dariusz Marcinkiewicz	Staff Consultant	5.0	120	600
Natalie Cloutier	Customer Service	71.3	48	3,420
Natalie Girard	Customer Service	85.5	48	4,104
Ruth Rathwell	Customer Service	87.5	48	4,200
<b>Sub-total</b>		<b>337.3</b>		<b>\$ 28,164</b>

<b>Total Hours &amp; Fees</b>		<b>1106.3</b>		<b>\$ 175,406</b>
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69



## 1986-1990 Hepatitis C Class Action Settlement

### Protocols – Transfused Plasma Exhibit "RRR" referred to in the Table of Contents affidavit of J. Camp made before me on May 23 1995. [Signature] A Commissioner for Taking Affidavits For British Columbia

Tab	Item Description
1	Class Participation Primarily Infected Class Participation Secondarily Infected
2	Class Participation for a Personal Representative of a Deceased Person – PIP Class Participation for a Personal Representative of a Deceased Person – SIP
3	Class Participation for a Personal Representative of a Minor/Incompetent – PIP Class Participation for a Personal Representative of a Minor/Incompetent – SIP
4	Class Participation for a Dependant of a Deceased Person – PIP Class Participation for a Dependant of a Deceased Person – SIP
5	Class Participation for a Family Member of a Deceased Person – PIP Class Participation for a Family Member of a Deceased Person – SIP
6	Fixed Payment Compensation
7	Compensation for Loss of Services in the Home
8	Compensation for Cost of Care Compensation for Uninsured Treatment and Medication Compensation for Out-of-Pocket Expenses

9      Compensation if Deceased Prior to 1 January, 1999  
         Compensation if Deceased After 1 January, 1999  
         Compensation for Uninsured Funeral Expenses

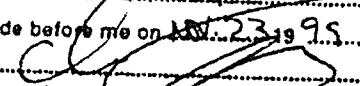
10     Compensation for Approved Dependents  
         Compensation for Approved Family Members  
         Compensable HCV Drug Therapy



70

**CAMP CHURCH & ASSOCIATES**  
BARRISTERS

J.J. Camp, Q.C.\*  
David P. Church\*  
Joe Fiorante\*  
Andrew J. Pearson  
Sharon D. Matthews  
Ian G. Schildt

This is Exhibit "SSS" referred to in the  
affidavit of J. Camp  
made before me on SEP 23 1999  
  
A Commissioner for Taking Affidavits  
For British Columbia

4th Floor, Randall Building  
555 West Georgia Street  
Vancouver, B.C.  
Canada V6B 1Z5

Telephone: (604) 689-7555

Facsimile: (604) 689-7554

FILE REF: 96015/001

September 2, 1999

VIA FAX NO. (416) 304-6406

Hodgson Tough Shields DesBrisay O'Donnell  
Barristers & Solicitors  
Suite 550 - 36 Toronto Street  
Toronto, ON M5C 2C5

Attention: Bonnie Tough

Dear Sirs/Mesdames:

**Re: Hepatitis C**

I write further to your inquiries pertaining to the opt out experience in British Columbia.

The British Columbia opt out period was set for approximately 6 months and was to expire on February 28, 1999. The Framework Agreement was announced in mid-December, 1998. Approximately 10 days before the expiry of the opt out period, the Court ordered the opt out period suspended and it remains suspended.

Prior to the expiry of the opt out period, my firm received approximately two dozen opt out notices. I attempted to confer with each one of these persons to determine why they were opting out. Of the opt outs I spoke with, most withdrew their opt out notices. In most cases, they indicated that they had opted out because they did not understand the plan or they thought that opting out was opting in. The persons who remain opted out gave the following reasons

- 2 persons who wanted nothing to do with the litigation
- 1 person who had tested negative for the virus and therefore is not a class member

**CAMP CHURCH & ASSOCIATES**

- 1 person who was not a member of this class but of the hemophiliac class and was directed to counsel for the appropriate class
- 1 person who is well known to our firm and opted her child out prior to any settlement terms being announced.

I was unable to reach approximately four of these persons who opted out, including one who moved to Europe and did not leave a forwarding address.

It is my opinion that persons who remain opted out including the persons I could not reach do not expose the plan to any excess liability or any appreciable excess liability.

Yours truly,

**CAMP CHURCH & ASSOCIATES**

By:

J.J. Camp

JJC:

71

## MEMORANDUM

TO: Ivan Whitehall, Q.C., Clif Prowse, Micki Smith, Christine Henderson, Bonnie Tough/David Robins, Harvey Strosberg, Q.C., Pierre Lavigne, Michel Savonitto  
This is Exhibit "TTT" referred to in the  
FROM: J.J. Camp affidavit of J.J. Camp  
DATE: Oct. 1, 1999 made before me on Oct. 23, 1995  
CLIENT: Hepatitis C  
MATTER: Class Action - OPT OUTS-SUPPLEMENTARY MEMORANDUM

*[Signature]*  
A Commissioner for taking Affidavits  
For British Columbia

I refer to my earlier memorandum of September 23, 1999, a copy of which is attached for ease of reference, and note that some of the points made in that memorandum are superseded by this memorandum.

### NATIONAL CLASS ISSUES

Let me first address a concern raised by Ivan Whitehall pertaining to persons who may not be bound by the provisions of the 1986-90 Hepatitis C Settlement. As matters presently stand, Mr. Justice Winkler has ordered that the Ontario certification stand as a national certification except in Quebec and British Columbia. So far as I am aware, the appeal period has run and this order can not be reversed by the Ontario Court of Appeal. It is possible that the Ontario Court of Appeal or the Supreme Court of Canada could overrule the concept of national certification in an unrelated action but I consider this highly unlikely and would not have an adverse effect in this case. The only real risk on this issue is that the courts in the another jurisdiction, say, Alberta, could hand down an order contrary to the national certification holding that the Ontario courts have been over reaching and that a person in that jurisdiction is not and was never a member of the national class.

Ivan Whitehall raised the issue whether these persons who are not bound by the provisions of the 1986-90 Hepatitis C Settlement Agreement are nevertheless entitled to the benefits conferred by the Plans. The answer is "yes". These persons have already been costed in the actuarial assessment and they are entitled to fully participate. In the event this is not explicitly clear, I do not anticipate any difficulty in making it abundantly clear both in the Agreement and the Plans and, if necessary, advising the supervising courts.

Ivan Whitehall then raised the concern whether the FPT Governments or the insurers will

be able to seek indemnity from the Trust Fund if these persons successfully sue on or settle a claim which would otherwise fall within the 1986-90 Hepatitis C Settlement. Again, the answer is "yes". This is explicitly spelled out in article 11.02 of the 1986-90 Hepatitis C Settlement Agreement. I repeat that these persons have already been costed in the actuarial assessment and the FPT Governments or the insurers will be able to seek the same indemnity from the Trust Fund as if these persons were class members and opted out so long as such persons successfully prosecute an action to judgment or Settlement. Again, we will make this abundantly clear if necessary.

For the sake of clarity, persons who meet the class definition but may not be bound by the provisions of the 1986-90 Hepatitis C Settlement will be treated exactly the same as class members who opt out.

### **OPT OUT CLAIMANTS**

I also wish to address a few additional points on the subject of opting out. It seems clear that there only two cohorts who would have any reason to opt out. The first cohort consists of infant claimants who would be concerned about sufficiency of the Trust Fund to meet long-term requirements. The second cohort would be high income earning claimants who would be concerned that the ceilings and limitations pertaining to income loss would not be lifted. Let me deal with these in order.

### **CHILDREN**

1. We now have the reasons for judgment from Mr. Justice Smith who at paragraph 27 orders that those legally responsible for person suffering legal disability (e.g. infants) may not opt out of the Settlement without leave of the court and on notice to the Public Trustee. In Ontario, I understand that Wilson McTavish, counsel for the Children's Lawyer, made the same submission and that a similar provision will be incorporated in the Ontario judgment. I anticipate that Quebec will also follow suit. If this is the case, in my opinion, the specter of infant claimants opting out vanishes. That is to say, it is extremely unlikely that the judges will grant leave to infants to opt out of settlement which they consider to be in the best interests of the infants.

2. As I previously explained, a BC mother was leading the charge to get a cross Canada mass tort action commenced on behalf of HCV infected children. Not only was she unsuccessful in this regard, she has now reversed ground and opted herself and her child back into the Settlement. I enclose a self explanatory letter from her solicitors in this regard.

### **HIGH INCOME EARNERS**

8. We must not lose sight of the fact that the opt out period will be established ending approximately seven months from today at which time the opting out period will close. At this time, the HCV disease process has been running for approximately ten years and it is highly unlikely that high income earners have been rendered unemployable as a result of their HCV infection.

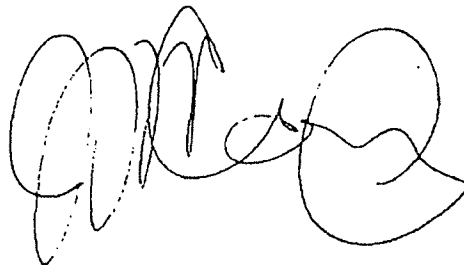
### GENERAL COMMENTS

NOVA LUBZIN S. NOVA CO. PO BOX 146, 1952-1

opted out so long as such persons successfully prosecute an action to judgment or settlement. As you know, I have proffered my opinion until I am blue in the face that there is a very great probability that the ceilings and limitations will be removed in fairly short order. Once these ceilings and limitations are removed, the amount that a claimant will recover under the Plans is virtually equal to the amount they will recover in a court of law in Canada. Hence, in my opinion, the FPT Governments or the insurer will be indemnified almost fully from the Trust Fund. In some cases it will be necessary for the FPT Governments or the insurer from time to time to gain access to the medical records, employment records, etc. of the person opting out in order to be further indemnified from the Trust Fund. I believe that these problems are manageable. For example a specific provision can be incorporated in the judgments to provide for the FPT Governments or the insurers to come back to court to seek an order granting them access to such records. We must not lose sight of the fact that in my opinion precious few class members will opt out and that the opt out cases will be vigorously defended with a significant potential that the defendants may succeed on one or more liability issues.

10. I also think it is worth noting that the first opt out case is likely to languish in the courts for a good long while given the issues and the likely appeals. It would not surprise me that this process would take at least five years from now. Hence, the FPT Governments or the insurers will have the use of the \$10.5 million for several years and we will have plenty of time to work out any protocols pertaining to indemnification. We must not lose sight of the possibility or probability that there will never be a successful action prosecuted by a claimant who opts out and therefore the issue of indemnification may be moot.

11. Finally, I feel constrained to repeat that in British Columbia we have had opt out experience in this very case with an opting out period nearly expiring. The result was only a handful of claimants opted out and none of those claimants, in my opinion, exposed the Trust Fund to any excess liability.

A handwritten signature in black ink, consisting of a series of loops and flourishes, likely belonging to a legal professional or government official.



MEMORANDUM

TO: Ivan Whitehall, Q.C., Clif Prowse, Micki Smith, Christine Henderson, Bonnie Tough/David Robbins, Harvey Strosberg, Q.C., Pierre Lavigne, Michel Savonitto

FROM: J.J. Camp

DATE: September 23, 1999

CLIENT: Hepatitis C

MATTER: Class Action - OPT OUTS

---

I thought it appropriate to give some perspective to the issue of opting out. I have been giving this some thought and I share the legal conclusion of Justices Winkler and Smith that it is not a material issue. Let me explain why.

First, I enclose a letter which I sent earlier this month to Bonnie Tough on this issue. Since writing this letter, the foremost opponent of the Settlement in British Columbia, Leslie Gibbenhuck, the person referred to in the last bullet on page 2 of my letter, has formerly asked to rescind her opt out and to opt herself and her child back in. The long and the short of it in BC is that we had a "test run" and our experience is that there is no exposure to the Settlement Fund for any excess liability attributable to opt outs.

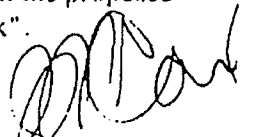
Let me quickly canvas the reasons why we asked the actuaries to assume "modest liability" (see page 29 Eckler Report) of \$10 million for the value of judgments and settlements pertaining to opt outs.

1. The foremost reason why claimants will not opt out is the liability risk of losing. The parties have now "played their cards" in this respect. Defense counsel in Ontario and British Columbia have indicated during the approval hearings that they have a better than even chance of successfully defending these claims. Class counsel in Ontario have said that there is approximately a 65 percent chance of succeeding. Class counsel in British Columbia have conceded that the policy defense is "formidable".
2. The next foremost reason is the cost and delay associated with opting out. Without doubt, a claimant who opts out will have to fund disbursements in excess of \$100,000 and maybe as much as several hundred thousand dollars. A lawsuit commenced today by a person opting out will not be concluded for at least several years.

3. The next cogent reason for not opting out is that recovery under the plans mirrors closely the compensation available in a court of law. The significant negative differences are the limits on income loss recovery and the most significant of these are the cap of \$75,000 and the 30 percent holdback which are subject to being removed. It is our opinion that these limitations will be removed in fairly short order. I fully appreciate that there are other differences such as the deductibility of income tax and additional collateral benefit deductibility but these issues could not reasonably motivate a claimant to opt out. I also point out that in many instances, most notably in claims pertaining to death, claimants will do better under the plans in many jurisdictions than they would in a court of law.
4. The plans permit a reassessment of both pecuniary and non-pecuniary damages which will be much more attractive to claimants than the once and for all assessment (lottery?) of damages in a court of law.
5. The claims administration process will be cheap, quick and user-friendly especially when compared to the litigation process.
6. The claims will be administered without the claimants incurring any, or at least any significant, legal fees especially when compared to the litigation process.
7. Claimants who are dissatisfied with the decisions of the administrator have cheap and expeditious avenues to appeal especially when compared to the litigation process.
8. Eligibility will be much easier to prove especially with the reverse onus on the plans to disapprove eligibility, when compared to proving causation in a court of law.
9. The average age of the HCV cohort is above 50 and many of them are elderly. Furthermore, in our experience they are settlement oriented and are not motivated to litigate.

I agree with Ivan Whitehall who, so I am informed, said words to the effect in the Ontario hearing that "no reasonably informed counsel would ever recommend that a claimant opt out".

As everyone knows, the Eckler Report has conservatively costed all claimants including claimants who may opt out and have added a further \$10 million to account for possible excess liability pertaining to opt outs. I reiterate that based on BC experience there is virtually no exposure to the Settlement Fund for excess liability above and beyond the costing already embedded in the Eckler Report and, for my part, I think that the proposed insurers will take the \$10 million and "go laughing all the way to the bank".



72

# CAMP CHURCH & ASSOCIATES

BARRISTERS

J.J. Camp, Q.C.\*  
David P. Church\*  
Joe Fiorante\*  
Andrew J. Pearson  
Sharon D. Matthews  
Ian G. Schildt

4th Floor, Randall Building  
555 West Georgia Street  
Vancouver, B.C.  
Canada V6B 1Z5

Telephone: (604) 689-7555

Facsimile: (604) 689-7554

This is Exhibit "UUU" referred to in the  
affidavit of J.J. Camp  
made before me on November 19, 1999...

A Commissioner for Taking Affidavits  
For British Columbia

FILE REF: 96015/001

October 15, 1999

Department of Justice  
Office of the Chief General Counsel  
Room 2341, 284 Wellington Street  
Ottawa, Ontario  
K1A 0H8

VIA FAX NO. (613) 952-8713

Attention: Ivan G. Whitehall, Q.C.

Dear Sir:

## Re: HCV Negotiations - Opt Outs

I write further to our several telephone conversations on October 15, 1999. I confirm that I am instructed by Class Counsel to confirm the following points on the subject of opt outs:

1. The FPT Governments will be responsible for the payment of all claims associated with class members who opt out or persons who would be class members but for a judicial ruling that they are not bound by the national certification ("opt out claims" and "opt out claimants").
2. The FPT Governments will deduct from their obligation to fund the Trust the sum of \$10,533,000 and will use this sum to either self-insure or insure the risk of opt out claims as they see fit.
3. If and when the opt out claimants recover judgment against the FPT Governments or reach settlement with the FPT Governments, the FPT Governments will be indemnified out of the Trust to the full extent that opt out claimants would have otherwise recovered from the Trust had the opt out claimants been class members and entitled to compensation benefits.
4. A mechanism will be found and established in a protocol, to be approved by the Courts, to determine that the amount of the indemnity to the FPT Governments for any opt out claim from the Trust, including future liability, will be assessed on a onetime basis. The protocol will be designed so that the FPT Governments will not have to seek periodic

ODMA GRPWISE:CC DOM CC, PO 55DATA 63872 1

\* Denotes Law Corporation

## CAMP CHURCH & ASSOCIATES

indemnification from the Trust for opt out claimants. The protocol may include a provision for future liabilities to be paid on a time-phased basis and may include a discounting feature.

I trust this responds to your request.

Yours truly,

CAMP CHURCH & ASSOCIATES

By:

J.J. Camp

JJC:hp

cc: Clit Prowse  
Michelle Smith  
Robert Monette  
Harvey Strosberg, Q.C.  
Pierre Lavigne  
Michel Savonitto  
Bonnie Tough

**CAMP CHURCH & ASSOCIATES**  
BARRISTERS

J.J. Camp, Q.C.\*  
David P. Church\*  
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FILE REF: 96015/001

October 18, 1999

Department of Justice  
Office of the Chief General Counsel  
Room 2341, 284 Wellington Street  
Ottawa, Ontario  
K1A 0H8

VIA FAX NO. (613) 952-8713  
(604) 666-5801

Attention: Ivan G. Whitehall, Q.C.

Dear Sir:

**Re: HCV Negotiations - Opt Outs**

Thank you for your letter of October 18, 1999. I confirm that Class Counsel agree that if there is a judicial ruling that HCV claimants in a jurisdiction other than Ontario, Quebec or British Columbia are not bound by the national certification, those HCV claimants who wish to participate in the Plans may nevertheless do so notwithstanding the judicial ruling. In other words, the FPT Governments will be responsible only for those who do not wish to participate in the Plans wherever those HCV claimants are located.

With respect to my letter of October 15, 1999, I have been asked to clarify point 3 and make point 4 less awkward. I am quite confident that you will not have any difficulty with these matters. Point 3 needs to be clarified so that the full indemnity will be measured as at the date of the judgment against the FPT Governments or the date of settlement with the FPT Governments. Point 4 is worded awkwardly and reads better as follows:

"4. A mechanism will be found and established in a protocol, to be approved by the Courts, to determine the amount and timing of any future indemnity to the FPT Governments from

CAMP CHURCH & ASSOCIATES

the Trust for any opt out claimants. The protocol will be designed so that the FPT Governments will not have to track each opt out claimant in order to seek future indemnification from the Trust. The protocol may include a provision for future liabilities to be paid on a time-phased basis and may include a discounting feature."

Yours truly,

CAMP CHURCH & ASSOCIATES

By:

J. A. Camp



JJC:hp

cc: Clif Prowse  
Michelle Smith  
Robert Monette  
Harvey Strosberg, Q.C.  
Pierre Lavigne  
Michel Savonitto  
Bonnie Tough

73



MEMORANDUM

TO: Ivan Whitehall, Q.C., Clif Prowse, Micki Smith, Christine Henderson, Bonnie Tough/David Robbins, Harvey Strosberg, Q.C., Pierre Lavigne, Michel Savonitto

FROM: J.J. Camp

DATE: September 23, 1999

CLIENT: Hepatitis C

MATTER: Class Action - Thalassemics

This is Exhibit "VVV" referred to in the  
affidavit of J.J. Camp  
made before me on 11/23/99  
A Commissioner for taking Affidavits  
for British Columbia

Pursuant to our conference call this morning, I attach a memorandum from Sharon Matthews on the subject of thalassemia. I will apprise you further on the transmission issue once we have heard from Herb Poleski.

I agree with Sharon's conclusion in the first paragraph that thalassemics are already included in the transfused class. I am indifferent whether we follow the proposal by Justice Winkler that they be included in the haemophiliac class. In fact, it can be argued that the trust fund will be better off financially if the thalassemics are included in the haemophiliac class.

I also agree with Justice Winkler that this is an immaterial issue.

MEMORANDUM

TO: FILE  
FROM: SDM  
CLIENT: HEPATITIS C  
MATTER: CLASS ACTION

DATE: September 23, 1999

---

Bruce Lemer spoke with Gerry Growe at Vancouver Hospital pertaining to blood products given to thalassemics. Growe advised that only thalassemic majors are given product. There are about 12 of them in Vancouver. There are more in Toronto because it is a disease which tends to occur in persons of Greek and Italian descent and those populations are higher in Toronto. Thalassemics are given washed red cells which in medical parlance is simply a variation of packed red cells and is considered to be the same blood product. The plasma is washed off. Given this, Winkler J. is probably correct that the thalassemics are included in the transfused class.

Growe could not comment on the transmission rate of HCV through washed red cells. He indicated that in theory it should be lower because the plasma is washed off. He suggested further sources of information on that topic would be Pat Doyle at CBS or Steve Kleinman, an infectious diseases expert in Victoria. Paul Rogers, a hemotologist at Children's Hospital, is the BC expert on Thalassemia. The national expert on Thalassemia is Nancy Oliviera at Sick Kids' Hospital in Toronto.

Bruce is going to follow up with Kleinman and Herb Poleski on the transmission issue.

It is open to debate whether the thalassemics should be included in the transfused class or the hemophiliacs class but the exposure is minimum regardless of which class they are in and, in fact, the trust fund is probably better off financially if they are subsumed in the hemophiliac class.

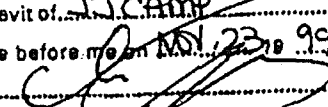
This is not a material issue.

74

# CAMP CHURCH & ASSOCIATES

BARRISTERS

J.J. Camp, Q.C.\*  
David P. Church\*  
Joe Fiorante\*  
Andrew J. Pearson  
Sharon D. Matthews  
Ian G. Schildt

This is Exhibit ~~WWW~~ referred to in the  
affidavit of J.J. Camp  
made before me on Nov 23, 1999  
  
A Commissioner for Taking Affidavits  
For British Columbia

4th Floor, Randall Building  
555 West Georgia Street  
Vancouver, B.C.  
Canada V6B 1Z5

Telephone: (604) 689-7555

Facsimile: (604) 689-7554

FILE REF: 96015/001

November 10, 1999

Gignac, Sutts  
600 Westcourt Place, 251 Goyeau Street  
P.O. Box 670  
Windsor, Ontario  
N9A 6V4

VIA FAX NO. (519) 258-9527

Attention: Harvey T. Strosberg, Q.C.

Dear Sirs:

## Re: Hepatitis C Class Actions

Each of you with the exception of David Gruber to whom I am copying this fax, received a copy of Clif Prowse's fax of November 9, 1999 asking for an additional preamble clause to be inserted in each order. The clause reads as follows:

"that the parties agreed to this settlement on the basis that the PT Governments have the option to make periodic payments in accordance with Sections 4.02 and 4.04 of the Funding Agreement, in which event there will be no PT Government money or assets remaining in the Trust that are actuarially unallocated;"

The clause is "inelegant" to use Harvey's word but is sufficiently clear - the PT Governments want to make it plain that if they exercise their option to make periodic payments, none of their money or assets could be actuarially unallocated. I had several "go arounds" with Clif who agreed with my suggested stylistic changes but he could not persuade others including Robert Monette who had already agreed upon the French version of this language to be inserted in the "WHEREAS" clause in the Quebec order. Hence, I have agreed that the language originally proposed by Clif will be inserted in the preamble clause of each order. In Ontario it will be incorporated as clause (pp) under the heading "AND ON BEING ADVISED:" and in B.C. it will be incorporated as clause (cc) under the heading "AND ON BEING ADVISED:". I believe it will also be (cc) in David Gruber's order for the hemophiliac class in B.C.

CAMP CHURCH & ASSOCIATES

I have also spent about 1,000 hours dealing with the \$112,000 interest issue which was outlined in my facsimile sent to you on November 5, 1999. In fact, this issue is de minimus since all we are really talking about is the difference in the \$112,000 attracting the Treasury Bill rate of interest if it stays allocated to the provinces as opposed to the Real Rate of Return Bond rate of interest if we are able to receive it and invest it along with the upfront Federal Government money. Nevertheless, I am still trying to get the PT Governments "to see the light" on this issue. It does not affect any of the language in any of our orders.

Yours truly,

CAMP CHURCH & ASSOCIATES

By:

J.N. Camp

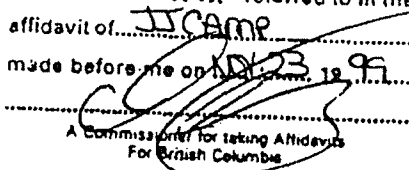
JJC:mf

cc: Bonnie Tough  
Pierre Lavigne  
Michel Savonitto  
David Gruber

75

**CAMP CHURCH & ASSOCIATES**  
BARRISTERS

J.J. Camp, Q.C.\*  
David P. Church\*  
Joe Fiorante\*  
Andrew J. Pearson  
Sharon D. Matthews  
Ian G. Schildt

This is Exhibit "XXX" referred to in the  
affidavit of J.J. Camp  
made before me on Aug 23 1999  
  
A Commissioner for taking Affidavits  
For British Columbia

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FILE REF: 96015/001

August 9, 1999

BY FAX

Gignac, Sutts  
Attention: Harvey T. Strosberg, Q.C.

Beaton, Derrick & Ring  
Attention: Dawna Ring

Elliott & Kim  
Attention: Douglas Elliott

Kapoor, Selnes, Klimm & Brown  
Attention: Bill Selnes

Docken & Company  
Attention: Clint G. Docken, Q.C.

Tinkler Morris  
Attention: Philip S. Tinkler

Kenneth Arenson

Teplitsky, Colson  
Attention: Harvin Pitch

Pierre Lavigne

Marchand, Magnan, Melançon, Forget  
Attention: Michel Savonitto

Hodgson Tough Shields DesBrisay  
O'Donnell  
Attention: Bonnie Tough

Blake Cassels & Graydon  
Attention: David Neave

Grant Kovacs Norell  
Attention: Bruce Lemer

Genest Murray  
Attention: Angus Mackinnon

Dear Sirs/Mesdames:

Re: Class Counsel Fees-Public Relations

QDMA\GHPWISF.CC QDM CC (N) SSDATA 62333 1

\* Denotes Law Corporation

CAMP CHURCH & ASSOCIATES

I mentioned the radio interview I did in British Columbia a couple of weeks ago. I obtained copy of the tape and had it transcribed and enclose a copy of the transcription.

Yours truly,

CAMP CHURCH & ASSOCIATES

By:

J.J. Camp



JJC:hp  
Encl.

RAV



CKNW INTERVIEW WITH J.J. CAMP ON JULY 11, 1999

- Warren: Mr. Camp, good afternoon sir. It has now been revealed this weekend that the lawyers involved are asking for \$52.5 million that is almost 4<sup>1/2</sup>% of the settlement and the Feds are none to happy about this. However, the local lawyer representing the class action suit in our province, J.J. Camp is on the line at the moment saying, "Hey just a minute, we took this case, it was risky, we had no guarantee and we should get paid".
- JJC: Good afternoon.
- Warren: First of all, exactly what are the lawyers asking for and how did they reach that figure?
- JJC: The lawyers have advised the actuaries who are costing this fund to make sure it fits within the scheme or the plan that has been negotiated. We have told the actuaries that they should cost the legal fees for class counsel at \$52.5 million so the Court will be able to assess the viability of this fund knowing what the demand by the lawyers will be. Now, how that amount came to be is a complex question and let me clarify something here, the class counsel have been involved in this case for years, in my case about 3<sup>1/2</sup> years, in the case of other lawyers across Canada who came together in these class actions for as long as six years. The offer that was eventually made came after we took the governments to Court and beat them. Meaning in BC for example, I went to a certification hearing for a week and to appeal and on one issue to the Supreme Court of Canada. They finally folded their tents and offered \$1.1 not \$1.2 billion and I should also add that the \$1.1 billion is a pan Canadian amount and since that offer was made, the negotiating team, of which I am a part have improved that offer by over \$100 million and we have also been able to persuade the government as part of the package not to tax the income on the trust fund. That amounts over the life of the plan to a further \$357 million benefit to the class members.
- Warren: Has this been worked out on a, can you do this, I don't know, on an hourly basis if the lawyers got together and said well I put in so many hours, I put in so many hours, on an average per capita that would be so much?
- JJC: That's an excellent question and again, I apologize but the answers aren't that simple.
- Warren: OK
- JJC: In BC, I took this case on an incredible risky basis, meaning there had never been an action that had ever succeeded against the governments of Canada or the Red Cross in blood matters before I took this action on. I knew that it was a very, very great risk. My firm has incurred over \$2 million in time so far on this file and hundreds of thousands of dollars on disbursements. Across Canada, lawyers have

done the same thing in Ontario, Quebec and the prairies and Nova Scotia etc. We are keeping time and our time, I can't tell you on this telephone call what it will be because I don't know. I only know my own time but I can tell you that the time will exceed for sure \$10 million and will probably in my estimation be closer to \$15 million. Now how do you arrive at \$52.5 million, it's a combination of the risk you take and in BC, I was on a contingency fee agreement of 33<sup>1/3</sup> % and I have waived that because it just would take too much out of the pockets of the class members. In Quebec, same thing, they have waived a 20% contingency fee and as you said this fee amounts to about something under 4 1/2 %.

Warren: Which you could never have got on a contingency anywhere else in any other case?

JJC: No. I mean that's absurd. On any case I take at least 20, 25 or 33 % because of the risk you take.

Warren: Right.

JJC: It wouldn't be fair in this case and we understood that.

Warren: You think the Feds are being unfair, saying it's too much?

JJC: I tell you this, the word "gall" comes to my mouth. There were Federal ministers and provincial ministers who told these class members, if you think your entitled to compensation, take us to court. So that's we did and we succeeded. And now they are complaining about the size of our fee having forced us to go through this litigation route.

Warren: It would seem to me, sir, in all my years of listening to the public on open line radio that the Feds might have and it's going to take your voice and a lot of other legal voices across the country to explain this in laymens language as you have just done for us that the Feds know that they have public opinion on their side because all the public is going to look at are headlines saying, "Ottawa says these fat cat lawyers are not going to get \$52.5 million."

JJC: I couldn't possibly agree more. I was president of the Canadian Bar Association some years ago and I learned one thing for sure that lawyer bashing is a cottage industry in North America even more so south of the border but it's alive and well in Canada. But if you talk to my individual clients in this case, the 800 or so who have approached me and my firm in BC, you won't find very many, if any, who are complaining about my legal services.

Warren: All right, let me challenge you on that, do you want to hang out and take a couple calls to see what the public says?

JJC: You bet.

Warren: Well, \$52.5 million for the lawyers, Ottawa says it's too much. Let's see what the public thinks. Is it too much or do you buy what you have just heard from J.J. Camp? You can phone him right now at 280-9898, that is 280-9898 phone him right now, this is Warren on CKNW 98.

(commercial break)

We're back with lawyer, J.J. Camp. Before we go to the calls sir and as you figured and I figured they would come in quick, fast and furious. What about the reaction, have you heard any of the reaction from your clients, are they mad?

JJC: Yes, I was at a Hepatitis C meeting yesterday in Victoria and I explained to them just what I explained to you and there was a reaction, it was "look the lawyers are taking too much, we get too little" but again I had to respond to that by saying, the offer that was made after we succeeded in Court against the governments was \$1.1 billion. We have augmented that offer by, in one sense about \$457 million so just on the settlement negotiations alone, we have enhanced the class members compensation scheme by a huge amount and we are only seeking a fraction of that.

Warren: And the point being as well I would take it and far be it from me to defend lawyers, the point being that if you people had not been there, if legal counsel had not been there, they would not have had a dime.

JJC: It was worse than that. Not only were there no successful cases, when I certified the BC case, there were about 50 actions started across Canada by HCV victims. Not one of those actions was proceeding because they were all too expensive and they were all too time consuming and nobody can afford to take on the governments and the Red Cross alone.

Warren: Mike in Abbotsford.

Mike: I am one of the members and I don't think it's too bad at all what they are going to get.

Warren: You are a Hep victim?

Mike: Yes I am.

Warren: OK, how much are you going to get?

Mike: I don't know and you know what that's not even the issue anymore. I think Mr. Camp just said we weren't going to get anything before and we couldn't do it on our own. I also had hemophilia and I was part of the HIV compensation package and that was hard fight and the hemophiliac society did that one on their own. The Hepatitis C is a way broader situation and it wasn't going to happen and not that

I was ever going to be pro-lawyer I thought, but in this case yes I am and I think they deserve everything they are going get.

Warren: Thanks for your call Mike. That's one up for you J.J.

JJC: That's one zero. I can't imagine this is going to stay this good.

Warren: Alright. Charles in Vancouver.

Charles: Ya I am on the car, so I will just say what I have to say. I think it's fair, more than fair and the government shouldn't be crying over this. I am not a lawyer myself but I think 4 ½ % if that's what it is, I support the lawyers is this. Contingency fees and risk is very high. I really don't think it is much at all. Thank you Warren.

Warren: Thank you. Ron in Vancouver.

Ron: Yes, I concur with the previous caller. I think they got just what they should have. Without them they wouldn't have got anything.

Warren: OK, this is unbelievable.

JJC: This is unbelievable.

Warren: Richard from Vancouver.

Richard: Yes, you are not going to get the same from me.

Warren: You talk to Mr. Camp. He is listening to you.

Richard: Ok, Mr. Camp, I think if you are really going to take on the role of being a humanitarian and somebody that is taking such an interest in peoples welfare. I think you should donate at least a little bit back minus your expenses of course. You know realistic expenses. Thank you.

JJC: Ok.

Warren: Ryan.

Ryan: Yes, good afternoon. The people got what they paid for. Without the lawyers and anyone acting for them previously they wouldn't have any settlement to speak of. How would they have liked to have been sent a bill for it rather than working on a contingency fee. Now that they got their money, now they want their cake too. Not a chance. The lawyers got everything they deserved.

Warren: Ok, it is unbelievable Mr. Camp. You are ahead of the game right now. I have never run an open line program which puts lawyers ahead of the game five to one in the public view.

JJC: I got to go now. (laughther)

Warren: Take it one step further if you would. What happens now that Ottawa said it's too much. Lead us through that.

JJC: Here is the scenario. We are going to seek approval of this deal in August, late August in British Columbia and Ontario and then a week later in Quebec. We are not going for the approval of our fees at that time. We have set a maximum figure and the Courts will know that. At a later hearing which will be an open transparent hearing where we file the material to defend the fee, we will then go before the Courts and the Courts will decide what a fair fee is. Not the lawyers, not the governments but the Courts will determine what a fair fee is.

Warren: Oh really. Which Court would that be?

JJC: All three Courts. And all three Courts have to agree on what that fair fee is and if any of the Courts disagree we are back all over again.

Warren: So you are literally going to have to spend more money going to Court to justify your own fee?

JJC: You bet.

Warren: That's fascinating. The other point that you haven't mentioned and I am surprised you have not because I count some of your own probably against my better judgment as friends of mine, they always point out that when they take a contingency case like this they are giving up usually other lucrative cases while they handle the contingency case.

JJC: I don't necessary agree with that and that may surprise you. In my practice the bulk of my practice is contingency. My answer is slightly different. I lose cases. I took a case for a young boy who was tragically injured in a highschool accident on a highschool field in an accident during class hours. He was rendered quadriplegic. I lost it at trial. I lost it at the Court of Appeal and I lost leave to the Supreme Court of Canada. I put in hundreds of thousands of dollars of time and hundreds of thousands of dollars of my firm's own money to pursue that case and I lost it. Other cases need to make up for those losses.

Warren: Ya, ok let's go back to the people. John in Vancouver. Talk to Mr. Camp

John: Yes, a question to the good lawyer. Now that \$52 million that we have been talking about in fees, can we get an idea as to how much that would represent per hour for the work done by the lawyer or lawyers.

JJC: Sure, I can help you, I can't give you a definitive answer.

John: Approximately.

JJC: Approximately it is going to be three or four times, well maybe four plus or minus, call it four times the hourly rate that the lawyers would normally charge for their hours. In Ontario that's the way they handle class actions customarily. They don't permit contingency fees in Ontario generally speaking so the lawyers there when they take on cases, they ask for a multiple of their hourly rate in these risky cases.

John: In this case here what does the normal fee for a lawyer?

JJC: It varies across Canada. The senior lawyers in Ontario will be \$450 or \$500 an hour.

John: So say that is \$400 an hour that would have to make up for the losses also.

JJC: That's correct.

John: Well it sounds like it might a little bit on the high side but I don't know exactly what the ratio of winning dollars to losing dollars would be so I can't comment further. But I thank you for answering the question.

JJC: Certainly, and I appreciate the question.

Warren: Ranjit in Vancouver

Ranjit: I feel the fee they charge is a little bit on the high side. The reason being, we cannot really compare with the percentage of the settlement if there is a case for \$100, 100% of that will be \$100 and no lawyer \_\_\_\_\_. Now, if for the same situation of spending the same time they are getting \$10 million and one percent of that will be still a lot of money. So I think it has to have some relationship with the total amount that is being paid to the lawyers.

JJC: That's a fair point and I agree with that and my response is pretty simple. Without doubt, this is the largest settlement or case that has ever come before the Canadian Courts and I can assure you in 29 years of litigating cases in British Columbia and across Canada, this is perhaps five times more complex than any case I have been involved with.

Randy: It sure is and I agree with that.

Warren: You told us that three courts will look if you have to justify and is justify the right word?

JJC: Yes that is correct, they have to approve the fee so we have to defend it.

Warren: So you will go to a low court and say here is our justification for it.

JJC: Here is the material to defend the fee.

Warren: And the Feds will say we're going to step it up into BC Supreme Court and then it will go to the Supreme Court of Canada.

JJC: No, I assume what the Feds are saying and it is interesting that whoever this Federal source is that said the fee is "excessive" did not identify him or herself. I assume they will come to Court with material resisting this fee and we will have a legal fist fight in the Courts over the justification of our fees. Whether it gets appealed or not, that's a totally separate issue and I just haven't got a clue at this time.

Warren: Do we know exactly how many lawyers across the country are involved in this?

JJC: No, but that's a question that has been asked me and I have, the best estimate I can give you is kind of an extrapolation. In BC there is about a dozen lawyers who will share in this fee for BC alone. And so if you extrapolate that across Canada you are easily up to, I don't know 60 -70 lawyers or something in that order of magnitude.

Warren: In each province?

JJC: No, no across the country.

Warren: No, no I meant are they represented in each province?

JJC: Pretty well, there are a couple of maritime provinces that are missing but they are very, very tiny, in fact PEI may not even have any Hep C victims.

Warren: OK, I note with interest and I had noted that before you emphasized that the Feds, this source that is saying it is too much, is it your view that the source who is saying it is too much is acting on instructions from Health Minister, Allan Rock would you think and floating balloons here?

JJC: Oh I would think so but I would quickly add this. I viewed it as a bit of knee jerk reaction and if our fees were 10, 20, 30 or 40 million, it would have been "excessive".

Warren: Isn't Rock a lawyer?

JJC: He is.

Warren: Presumably I imagine that 99.9% of your brethren are going to agree with what your stand, wouldn't Rock agree with your stand as a lawyer?

JJC: *I wouldn't speculate on that, apparently he doesn't agree so lawyers are not all of the same stripe I can assure you.*

Warren: So we have learned. J.J. Camp thank you.

JJC: You are more than welcome, I appreciate the chance to chat with you.



76

This is Exhibit 'YYY' referred to in the  
 affidavit of JJ Camp  
 made before me on Jan 22, 99  
 A Commissioner for taking Affidavits  
 For British Columbia

**Camp Church & Associates**

*Endean v. Red Cross, et al*

**DISBURSEMENTS OVER TIME**

DATE	TOTAL
Jan-97	\$7,041.23
Feb-97	\$8,743.24
Mar-97	\$13,487.85
Apr-97	\$20,876.32
May-97	\$21,259.29
Jun-97	\$21,786.68
Jul-97	\$22,017.95
Aug-97	\$22,616.76
Sep-97	\$26,393.45
Oct-97	\$26,872.31
Nov-97	\$27,911.64
Dec-97	\$31,568.11
Jan-98	\$32,811.06
Feb-98	\$34,485.19
Mar-98	\$36,082.55
Apr-98	\$48,423.82
May-98	\$54,598.11
Jun-98	\$70,706.34
Jul-98	\$74,053.84
Aug-98	\$74,675.87
Sep-98	\$78,400.43
Oct-98	\$80,254.34
Nov-98	\$118,919.40
Dec-98	\$133,802.89
Jan-99	\$136,051.25
Feb-99	\$127,120.35
Mar-99	\$158,753.41
Apr-99	\$176,521.53
May-99	\$149,701.54
Jun-99	\$202,108.65
Jul-99	\$221,064.04
Aug-99	\$178,058.82
Sep-99	\$216,900.32
Oct-99	\$182,626.34

*77*

**CAMP CHURCH & ASSOCIATES**  
BARRISTERS

J.J. Camp, Q.C.\*  
David P. Church\*  
Joe Fiorante\*  
Andrew J. Pearson  
Sharon D. Matthews  
Ian G. Schildt

This is Exhibit "ZZZ" referred to in the  
affidavit of JJCAMP  
made before me on April 23, 1999  
A Commissioner for taking Affidavits  
For British Columbia

4th Floor, Randall Building  
555 West Georgia Street  
Vancouver, B.C.  
Canada V6B 1Z5

Telephone: (604) 689-7555

Facsimile: (604) 689-7554

FILE REF: 96015/001

March 29, 1999

VIA FAX NO. (613) 952-8713

VIA FAX NO. 660-2636

Department of Justice  
Office of the Chief General Counsel  
Room 2341, 284 Wellington Street  
Ottawa, Ontario K1A 0H8

Ministry of Attorney General  
Legal Services Branch  
1301 865 Hornby Street  
Vancouver BC V6Z 2H4

Attention: Ivan G. Whitehall, Q.C.

Attention: D. Clifton Prowse

Dear Sirs:

**Re: HCV Negotiations**

A concern has arisen over limitation periods pertaining to uncertified 1986 - 1990 classes. This letter confirms our discussions at our meeting on Friday, March 26, 1999 that the FPT Governments will not be raising nor will they be relying on any limitation defenses that they may have pending approval of the Settlement. In the event that the Settlement is not approved, "all bets are off" and the F PT Governments will be asserting all affirmative defenses including limitation period defenses. Hence, at this time, the FPT Governments will consent to the certification of uncertified 1986 - 1990 classes such as the hemophiliac 1986 - 1990 classes without regard to any limitation period defenses.

Yours truly,

CAMP CHURCH & ASSOCIATES

By:

J.J. Camp

JJC:hp

cc: see attached

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• Denotes Law Corporation

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

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AFFIDAVIT OF J.J. CAMP

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CAMP CHURCH & ASSOCIATES  
Barristers & Solicitors  
4th Floor, Randall Building  
555 West Georgia Street  
Vancouver, BC  
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78

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FILE REF: 96015/001

September 24, 1997

BY FAX: (902) 423-3544

Buchan, Derrick & Ring  
Barristers & Solicitors  
5525 Artillery Place, Suite 100  
Halifax, Nova Scotia B3J 1J2

Attention: Dawna J. Ring

Dear Dawna:

This is Exhibit F referred to in the  
affidavit of J.J. Camp  
made before me on NOV 23 1997  
A Commissioner for taking Affidavits  
For British Columbia

### Re: Hepatitis C Class Action

What follows is some modest thinking on various heads of damages, some considerations pertaining to the plight of Hepatitis C victims, and some general points. Hopefully, this will assist us in advancing the cause of possibly setting this matter.

### Heads of Damage

1. Some kind of signing bonus for every Hepatitis C victim. I hesitate to mention a number in case it becomes crystallized, but, I suggest \$15,000.
2. For those who do not have any symptoms, wage loss, medical care costs, etc., I would suggest that any further damages be deferred until the symptoms and consequential damages manifest themselves.
3. For those who do have symptoms, the following matters should be addressed pertaining to general damages:
  - (a) Pain and Suffering.
  - (b) Loss of Enjoyment of Life.
  - (c) Stress associated with the anxiety of having a virtually untreatable disease which may erupt and ravage the victim decades into the future. Furthermore, Hepatitis C victims generally are very anxious about transmission of the disease which often inhibits the Hepatitis C victim both mentally and physically. Included under this component is shunning by friends, family and acquaintances. In addition, for

## CAMP CHURCH & ASSOCIATES

some Hepatitis C victims the family becomes dysfunctional. Healthy family members find themselves taking on ever-increasing responsibilities and duties with no end in sight. All of these points probably fall within the rubric of "loss of enjoyment of life" but I consider them very important in the quantification of damages for Hepatitis C victims.

- (d) Wage Loss. Past wage loss will be fairly easy to compensate but future wage loss is likely to be very difficult to assess. Again, it may be appropriate to defer future wage loss for future assessment.
- (e) Medical Costs. Similarly, medical costs not already covered by MSP, etc. can be easily determined and compensated. Future care costs, including potentially massive home care costs by care givers if the Hepatitis C victim becomes totally disabled, are much more speculative and therefore much more difficult to assess. Again, it may be appropriate to defer the assessment of future care costs to a future time.
- (f) Funeral Costs. These will only be awarded if the cause or contributing cause was Hepatitis C. I doubt that this will be a substantial point in any negotiations.
- (g) Management Fees. These would be awarded in those cases where the loss is very substantial, the award needs to be invested, and the Hepatitis C victim is not capable of properly managing the investment. I suspect this head of damages will be fairly rare.
- (h) Income Tax Gross-up. This applies only to those cases where substantial future care costs are at issue. Again, it is likely that this head of damages will be rarely awarded.
- (i) Court Order Interest. This should be assessed and paid where applicable.

Overall, it is our experience to date with the over 200 Hepatitis C victims that we now represent that they do not generally present with serious or incapacitating health problems. Rather, their biggest concern is what the future holds for them. Almost all of them face the possibility, if not the probability, of future serious and potentially incapacitating symptoms associated with their disease. Hence, we must give careful consideration as to how to assess these future concerns and costs. At the moment, my tentative thinking is that substantial awards for future developments should await the actual occurrence of those future developments.

Another consideration will be the discovery of a possible cure for Hepatitis C and how this will impact the assessment of damages.

A further consideration is how the death of a Hepatitis C victim affects payment of damages. For example, if a Hepatitis C victim is receiving periodic payments, will these cease upon his or her death.

I also suggest that consideration should be given to loved ones and care givers who are providing exceptional care for the Hepatitis C victim. The burden imposed on these people can be very great. For example, loved ones or care givers may have to quit work or forego university or a career to care for the Hepatitis C victim.



CAMP CHURCH & ASSOCIATES

Given my thinking that much of the damage package is speculative, it seems appropriate that we should seek some actuarial advice as to the amount of money that will be needed on a statistical and epidemiological base to meet the future care cost and requirements.

I end this letter where I started: my thoughts are rudimentary but hopefully they will assist in the development of a settlement approach to these cases.

I thought it best to copy all of the participants with this letter as you did.

Yours truly,

CAMP CHURCH & ASSOCIATES

By:

J.J. Camp



JJC:hp

cc: see attached list

CAMP CHURCH & ASSOCIATES

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