

**Schedule 2 to the Judgment of Justice W.K. Winkler
dated June 21, 2001**

Distribution Protocol

DISTRIBUTION PROTOCOL

For the Distribution of Trust Funds pursuant to Article 5.12 of the Canadian Red Cross Society Amended Plan of Compromise and Arrangement under the *Companies Creditors' Arrangement Act* dated July 31, 2000, further amended August 30, 2000, and sanctioned by Order of Mr. Justice Blair of the Ontario Superior Court dated September 14, 2000, and pursuant to the Settlement Orders in the Class Actions

Introduction

- 1) In this protocol, capitalized terms shall have the same meaning as defined in the Canadian Red Cross Society Amended Plan of Compromise and Arrangement dated July 31, 2000.
- 2) Additional definitions:
 - "Administrator" means the administrator of the HCV Fund appointed pursuant to the Settlement Orders;
 - "Class Counsel" means, for the British Columbia Class Action, David Klein of Klein Lyons; for the Quebec Class Action, Michel Belanger of Lauzon Belanger; for the Ontario Class Action, David Harvey of Goodman and Carr LLP; or all three collectively, as the context requires;
 - "Class Period" means prior to January 1, 1986 and/or between June 30, 1990 and September 28, 1998;
- 3) This document represents the protocol to be followed by the Trustee and Administrator in distributing the HCV Fund pursuant to Article 5.12 of the Plan and the Settlement Orders in the Pre 86 / Post 90 HCV Class Actions. The intent of this protocol is to provide a fair, expeditious and cost-effective distribution procedure. This protocol should be interpreted with these goals in mind.

Eligibility

Primarily Infected Claimants

- 4) To be eligible for payment pursuant to this protocol, a Claimant must deliver to the Administrator a completed application in the prescribed form. Claimants will be considered eligible for payment if they provide to the Administrator:
 - a) proof that they have been accepted as eligible for compensation by the Ontario Hepatitis

C Assistance Plan, the Manitoba Hepatitis C Plan or the Quebec Hepatitis C Plan; or,

b) the following documentation:

i) a report in the prescribed form from a physician treating the Claimant verifying that the Claimant has tested positive for the Hepatitis C Virus, and stating that, to the best of the physician's knowledge, the Claimant has never used intravenous drugs except under the direction of a licenced medical practitioner;

ii) copies of medical, clinical, laboratory, hospital, or other records demonstrating that the claimant received Blood by way of transfusion or other medical procedure in Canada during the Class Period, or, in the absence of such records, a letter from a physician treating the Claimant indicating that given the nature of a procedure undergone by the Claimant in Canada during the Class Period, it is highly likely that Blood would have been received by the Claimant; and,

iii) an affidavit sworn by the Claimant in the prescribed form deposing

(1) to the fact that the Claimant has never used intravenous drugs except under the direction of a licensed medical practitioner;

(2) that the Claimant had not had any indications of Hepatitis C infection prior to the receipt of Blood during the Class Period; and

(3) that the Claimant is not entitled to compensation under the FPT 1986-1990 Settlement.

5) If a Claimant is unable to fulfill the conditions in paragraphs 4 (b)(i) or 4 (b)(iii)(1) above, such Claimant may file such further or other evidence with the Administrator to substantiate the Claimant's infection with the Hepatitis C Virus through Blood received by the Claimant in Canada during the Class Period. The evidence shall be provided to the Trustee, who shall review such evidence and determine whether, on a balance of probabilities, the Claimant became infected with Hepatitis C as a result of the receipt of Blood in Canada during the Class Period. If such a determination is made, the claim shall be considered an Accepted Claim.

Secondarily Infected Claimants

6) If a Claimant can satisfy the Trustee, on a balance of probabilities based on evidence submitted to the Trustee by the Claimant, that the Claimant became infected with the Hepatitis C Virus through sexual, perinatal or other exposure to a person who became infected with the Hepatitis C Virus through the receipt of Blood in Canada during the Class Period, that Claimant's claim shall be considered an Accepted Claim. Evidence to be submitted pursuant to this paragraph shall, at a minimum, include a report referred to

paragraph 4(b)(i) and an affidavit referred to in paragraph 4(b)(iii) with respect to the Claimant, and evidence sufficient to establish a claim on behalf of the infected person pursuant to paragraph 4 (a) or (b).

Claims by Family Members of Infected Persons

- 7) All living spouses, children, parents, siblings, grandparents and grandchildren of primarily or secondarily infected persons (Family Claimants) are entitled to apply for payment under the settlement.
- 8) Primarily or Secondarily Infected Claimants (Applicants) shall list on their application forms the names and addresses of all Family Claimants who are under the age of 18 or under a legal disability. Failure of an applicant to list all such family members on the form could result in future payments to the applicant being denied.
- 9) Adult Family Claimants who are not under a disability shall file their own, separate application forms, which shall indicate the name of the Primarily or Secondarily Infected Claimant to which their claim refers.
- 10) Family Claimants shall be entitled to payments in the following amounts:
 - a) Spouses: \$300
 - b) Minor children: \$300
 - c) All others, \$100
- 11) If the total amounts payable to Family Claimants in accordance with paragraph 10 referable to any one Primarily or Secondarily Infected Claimant exceeds \$800, such payments shall be pro-rated so as to total \$800.

General

- 12) Notwithstanding any of the above, no Claimant shall be eligible for payment hereunder if they are entitled to compensation under the FPT 1986 - 1990 Settlement.
- 13) For a Claim on behalf of an estate, minor or other incompetent person, the above eligibility criteria must be followed, but the Affidavit referred to above in paragraph 4 (b)(iii) shall be sworn by the Legal Representative of the Claimant, and shall be in the prescribed form for claims filed by Legal Representatives, and the application may be completed by the Claimant's Legal Representative. In addition, the Legal Representative must provide to the Administrator evidence sufficient to satisfy the Administrator that the purported Legal Representative has the legal authority to act on behalf of the Claimant.

Distribution

Summary

- 14) The amounts payable to Family Claimants are deducted from the amounts payable to the related Primary or Secondary Claimant. In this way, each "family unit" will receive the same total payment. Family Claimants shall be paid once. Primary and Secondary Claimants shall be paid in 3 installments: following the Initial Deadline, 3 years following the Implementation Date, and 10 years following the Implementation Date. To the extent possible, Late Claimants will be paid an amount to catch up any payments that were missed before further distributions are made.

Notice

- 15) Within 15 days' of the Plan Implementation Date, the Administrator shall advertise for claims to be submitted to it. The notices shall indicate that in order to be eligible for the Initial Distribution, claims must be filed within 6 months of the Implementation Date. This date shall be known as the Initial Deadline.

Initial Distribution

- 16) Claims filed on or before the Initial Deadline shall be reviewed by the Administrator. If the Administrator is satisfied that a Claim by a Primarily or Secondarily Infected person meets the eligibility requirements set out above, such claim shall be considered an Accepted Claim. Any claims which are denied by the Administrator shall be submitted to the Trustee for review. The Trustee may override the decision of the Administrator and convert the claim to an Accepted Claim.
- 17) On the date which is 6 months from the Implementation Date, the Administrator shall total the number of Accepted Claims. The Initial Distribution shall be made within 60 days of the date which is 6 months after the Implementation Date. The Initial Distribution shall be calculated by dividing 50% of the monies remaining in the HCV Fund on that date (after provision or payment of the Administrator's accounts, the Trustee's accounts and Class counsel fees and disbursements) in equal shares among the Accepted Claims. Out of the amount allocated to each Accepted Claim, amounts payable to Family Claimants referable to that Accepted Claim shall be calculated in accordance with paragraphs 9 and 10. The Administrator shall issue cheques to all Accepted Claimants and Family Claimants in the amounts calculated in accordance with this paragraph.
- 18) Between the Initial Deadline and the third anniversary of the Implementation Date, the Administrator may continue to receive claims. If the Administrator is satisfied that a claim meets the eligibility requirements set out above, such claim shall be considered a Late Accepted Claim. However, no payments shall be made on such claims except under paragraph 19 hereunder.

Second Distribution

- 19) On the third anniversary of the Implementation Date, the Administrator shall total the number of Late Accepted Claims, and shall, within 60 days of the third anniversary of the Implementation date, provide to those Late Accepted Claims a payment equal to the amount paid to Accepted Claimants and related Family Claimants under the First Distribution, without interest. If there are insufficient funds to make such a payment and still retain 10% of the available funds, the payments shall be pro-rated so as to retain 10% of the available funds. If, after providing for the payments to the Late Accepted Claims and related Family Claims pursuant to this paragraph, there remains more than 10% of the funds available prior to allocation of such funds pursuant to this paragraph, such amount over and above 10% shall be paid out equally to all Accepted Claims and Late Accepted Claims.
- 20) The Administrator may continue to receive new claims following the payments made pursuant to paragraph 19. If such claims satisfy the criteria hereunder to become Accepted Claims, and if sufficient funds are available, upon acceptance the Administrator shall pay to such Accepted Claimants an amount equal to the total amount received by each Accepted Claimant and related Family Claimants under the first and second distributions, or an amount equal to the amount paid out to Late Accepted Claims pursuant to paragraph 19, whichever is less.

Final Distribution

- 21) On the tenth anniversary of the Implementation Date, certain other funds may become available pursuant to the terms of the Plan. Such funds shall be used first to equalize the payment to any claimants under paragraphs 19 or 20 who did not, due to a lack of available funds, receive an amount equal to the amount received by claimants under the first and second distributions. If there are insufficient funds available to make these equalization payments, the available funds shall be divided equally among each claimant entitled to an equalization payment. If, after such equalization payments are made, there are funds remaining, a Final Distribution shall be calculated as the remainder of the funds in the HCV Fund divided in equal shares to all Accepted Claimants. If this amount is over \$10, the Final Distribution shall be made within 60 days of the tenth anniversary of the Implementation Date. If the per claimant amount is less than \$10, no Final Distribution shall be made, and the balance of the HCV Fund shall be donated to a charity selected by the Trustee. The Trustee should select a charity that generally benefits class members.

Expenses of the Administrator, Trustee and Trustee's Counsel

- 22) All fees and expenses of the Administrator, the Trustee, and the Trust Counsel relating to the Administration of the HCV Fund shall be paid out of the HCV Fund on a monthly basis. Accounts for fees and expenses shall be submitted to the Trustee, who may, in his or her discretion, authorize the payment of the fees or refer the fees for assessment by the supervising judges of the Class Actions.

Payments to Public Trustee

- 23) Notwithstanding any other provision of the Plan or distribution protocol, any amount payable to a minor or mentally incompetent person hereunder will be paid to the Public Trustee or such other person as the law provides in the Province or Territory where the minor or mentally incompetent person resides unless an order of a court of competent jurisdiction provides otherwise.

Appeals

- 24) Any decision of the Administrator may be appealed to the Trustee. A decision of the Trustee to deny a claim may be appealed by way of motion to the judge supervising the Class Action under which the Claimant's claim falls, on notice to the Trustee and applicable Class Counsel.

Directions

- 25) The Administrator may seek directions on any matter relating to its duties hereunder from the Trustee, on notice to Class Counsel. The Trustee may apply for directions to the supervising judge or judges of the Class Action(s) as necessary, on notice to Class Counsel.

Dates

- 26) If any date referred to in this protocol shall fall on a Saturday, Sunday or Statutory Holiday, that date shall be interpreted as the next business day.

Reporting

- 27) The Administrator and the Trustee shall report, on a quarterly basis, to the Supervising Judges, Class Counsel, and the Representative Plaintiffs in each of the Class Actions. Such reports shall include the number of claims received, the numbers accepted, the fees and expenses of the Administrator and Trustee, and any other matters of significance relating to settlement implementation. The Administrator and the Trustee shall, if requested, meet annually with Class Counsel and the Representative Plaintiffs to report on the progress and status of settlement implementation and to discuss issues relating to settlement implementation.

August 24, 2001 (5:40PM)