

NOTICE TO CLASS MEMBERS

Posted February 5, 1999

No. C976108
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

Edward Killough, Patricia Nicholson, Irene Fead,
Daphne Martin and Darlene Nicolaas,

PLAINTIFFS

AND:

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

DEFENDANTS

Brought under the Class Proceedings Act, R.S.B.C. 1996, c.50

NOTICE TO CLASS MEMBERS

Description of the Proceeding

On November 14, 1997, an action was commenced against the Canadian Red Cross Society (the "Red Cross"), Her Majesty the Queen in Right of the Province of British Columbia (the "Provincial Crown") and the Attorney General of Canada (the "Federal Crown") in the Supreme Court of British Columbia.

The claim against all defendants is for damages suffered by the class members as a result of being infected with the Hepatitis C virus during the period January 1, 1955 through July 31, 1986 (the "Material Time") due to the failure of the defendants to ensure that the whole blood and blood products were tested for signs of the Hepatitis C virus. The definition of blood and blood products does not include those products specified in Appendix "A". The categories of damages claimed are:

- (a) damages for pain, suffering, loss of enjoyment of life and loss of life expectancy;
- (b) damages for past and future loss of income;
- (c) damages for loss of earning capacity and loss of opportunity;
- (d) out of pocket expenses;
- (e) damages pursuant to the *Family Compensation Act*, R.S.B.C. 1996, c.126;
- (f) damages pursuant to the *Estate Administration Act*, R.S.B.C. 1996, c.122;
- (g) costs; and
- (h) interest.

In addition, there is a claim against the Federal Crown and the Provincial Crown for punitive damages.

On November 24, 1998 the Supreme Court of British Columbia ruled that this action may proceed as a class action and that Darlene Nicolaas of Vancouver, British Columbia act as representative plaintiff in the class action.

Class Definition

1. The Class Members include persons who are:
 - i. British Columbia residents who are Primarily Infected Persons (see definition below);
 - ii. British Columbia residents who have
 1. been infected with Hepatitis C virus by a spouse or parent who is included in the definition of Primarily Infected Persons; and
 2. tested positive for the antibody to the Hepatitis C virus;
 - iii. the personal representatives of persons described in paragraph 1(i) and 1(ii) above who have died as result of being infected with the Hepatitis C virus; and above who have died as a result of being infected with the Hepatitis C virus; and
 - iv. the executors and administrators of persons described in paragraph 1(i) and 1(ii) above who have died subsequent to being infected with the Hepatitis C virus.
2. For greater clarity, but without expanding the definition above, blood and blood products does not include those products specified in Appendix "A".
3. The Class Members described in paragraph 1(i) above are referred to as "Primary Class Members".
4. With respect to those class plaintiffs described in paragraphs 1(ii), the word "spouse" means a person who
 - (a) is or was married to another person; or
 - (b) lived with another person in a marriage-like relationship for a period of at least 2 years and, for the purposes of the within Action, the marriage-like relationship may be between persons of the same gender.
5. The class plaintiffs described in paragraph 1(iii) are included for the purpose of claims under the *Family Compensation Act*, R.S.B.C. 1996, c. 126.
6. The class plaintiffs described in paragraph 1(iv) are included for the purpose of claims under the *Estate Administration Act* R.S.B.C. 1996, c. 122.

Stages of the Class Action

The class action has two stages. The first stage is a common issues trial at which time these common issues will be resolved:

(a) is the disease known as Hepatitis C caused by a virus that can be transmitted through whole blood and blood products?

(b) did any or all of the defendants owe a duty of care to the class plaintiffs to exercise all reasonable care, skill and diligence to ensure that whole blood and blood products which the Primary Class Members received were not contaminated with the Hepatitis C virus?

(c) if so, did any or all of the defendants breach their duty of care in the manner particularized in paragraphs 28, 30, and 32 of the Plaintiff's Statement of Claim, as amended, by refusing or omitting to implement, or neglecting to require the implementation of, either or both of the following tests during the Material Time:

- (i) ALT;
- (ii) Anti-HBc;

If so, by what date should the test or tests have been implemented?

(d) are either or both of the Federal Crown or the Provincial Crown vicariously liable for the acts and omissions of the Red Cross or the Canadian Blood committee (the "CBC") during the Material Time?

(e) what was the efficacy of the following tests to eliminate whole blood and blood products infected with the Hepatitis C virus from the blood supply in British Columbia during the Material Time:

- (i) the AL Ttest;
- (ii) the anti-HBC test;
- (iii) a combination of the ALT test and the anti-HBC test;

(f) did the CBC, the Federal Crown and the Provincial Crown intentionally destroy relevant documents and evidence as alleged in the Plaintiffs' Statement of Claim?

(g) do the actions of the CBC, the Federal Crown and the Provincial Crown justify an award of punitive damages against the Federal Crown and the Provincial Crown?

(h) if the actions of the CBC, the Federal Crown and the Provincial Crown justify an award of punitive damages against the Federal Crown and the Provincial Crown, what is the amount to be awarded?

There will be no monetary award for compensatory damages made at the trial of the common issues because the resolution of the common issues does not determine the responsibility of any defendant to pay a sum of money for compensatory damages to any individual class member. Each class member will have to prove his or her own claim for compensatory damages in the second stage.

The second stage deals with issues individual to each class member and it will occur after the resolution of the common issues. This will require the individual class members, in separate proceedings, to prove that the individual is a member of the class and that the failure of the defendants to implement certain tests during the Material Time (as determined in the first stage) caused them to become infected with Hepatitis C and suffered damages, as well as the amount of damages, if any.

Limitation In Claims Advanced

There are issues which may concern individual class members which will not be addressed in the class action. The action is brought against only the defendants described above for the claims described above. No allegations are made pertaining to preventing certain donors from donating blood (other than the failure to test referred to above) or failing to warn doctors or transfusion recipients about the dangers of blood transfusions or that blood infected with a virus may have been transfused. No claims are made against doctors or hospitals.

Each individual class member's claim is subject to a date by which that individual must start litigation. These dates may be running for those persons who do not wish to participate in the class action and who have not yet started an individual action. Participation in the class action means that if your limitation period did not expire before November 14, 1997, your claim can proceed. If your limitation period had already expired, the class action will not revive your claim.

If you want to make a claim including other allegations against these defendants you should seek legal advice and consider opting out as described below. If you wish to make a claim against different defendants, you should also seek legal advice.

Current Status of the Action

A trial date has not been set for this action.

There are discussions ongoing which may result in a settlement for those members of the class infected with the Hepatitis C virus during the period January 1, 1986 through July 31, 1986.

Pursuant to an order of the Ontario Court, General Division, the action has been stayed (no steps may be taken) against the Red Cross until July 16, 1999. The Red Cross is permitted to submit a plan of compromise or arrangement to its creditors and claimants pursuant to the *Companies Creditors Arrangement Act*. The action is not stayed against any of the other defendants.

Participation in the Class

The solicitor to the representative plaintiffs in this matter is:

David A. Klein
Klein, Lyons
Suite 500, 805 West Broadway
Vancouver, British Columbia
V5Z 1K1

Tel: (604) 874-7171
Fax: (604) 874-7180
Toll Free: 1-800-468-4466

Website: www.kleinlyons.com
Email: dklein@kleinlyons.com

Any person who may be a member of this class and who wishes to obtain more information about the class proceedings or to register as a class member should contact Klein, Lyons.

A representative Plaintiff will instruct these lawyers during the first stage. If a class member wishes to participate in the first stage directly, the class member may make an application to the court. Each class member has the right to be separately represented by lawyers of his or her own choice in the first or second stage.

Time to Opt Out of the Class Action

All current residents of British Columbia who fall within the definition of the class but who do not want to be a member of this class must opt out of the class by notifying Klein, Lyons in the Opt Out Notice attached to this Notice by mail post-marked no later than June 30, 1999.

All members of the class will be bound by the judgment of the Court on the common issues unless they have opted out of the class.

Financial Consequences of the Class Proceeding

Members of the class will be entitled to the benefit of a successful judgment of the Court on the common issues. If the action is not successful on the common issues, no member of the class will be responsible to pay the costs of the defendants. If the common issues action is successful but a class member is not successful in proving any damages, the class member may be responsible to pay the costs of the defendants in the individual class member's damage action.

Fee Agreements

The representative plaintiffs have entered into a fee agreement with Klein, Lyons which provides for the firm to be paid a portion of a settlement or favourable judgment for legal services rendered and to reimburse disbursements incurred in the litigation. The disbursements will form a first charge in favour of the law firm on any recovery if the case is settled or a favourable judgment is obtained. If no money is recovered on any settlement or judgment, the representative plaintiffs are not required to reimburse any

legal fees or disbursements to the law firm. The amount of fees and disbursements paid to the lawyers for the class must be approved by the Court.