

No. C976108

Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

BETWEEN:

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

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 OF PROPOSED SETTLEMENT**

**Pre-1986, Post-1990 Hepatitis C Claims**

**Against the Canadian Red Cross Society and others**

*This Notice may affect your rights.*

*Please read carefully.*

## **The Class Actions**

Class actions have been filed against the Canadian Red Cross Society (the "CRCS") and others with respect to infections with Hepatitis C resulting from the receipt of Blood (as defined below) in Canada before January 1, 1986 and after July 1, 1990. The first action covers people who received Blood in British Columbia. The second action covers people who received Blood in Quebec. The third action, commenced in Ontario, covers people who received Blood in any province or territory of Canada other than British Columbia or Quebec. The lawsuits allege negligence for failure to prevent the transmission of the Hepatitis C virus by Blood that was received by certain class members. The defendants deny the allegations.

On July 20, 1998, the CRCS was granted court protection from its creditors under the *Companies' Creditors Arrangement Act*.

Blood means blood or blood derivatives or blood products collected or supplied by the CRCS prior to September 28, 2000.

## **The Proposed Settlement**

A settlement has been reached with the CRCS and certain other parties referred to as Plan Participants (a list of the Plan Participants is attached to this notice). The CRCS settlement is a national settlement that covers class actions in British Columbia, Ontario and Quebec. The CRCS settlement creates a fund of approximately \$63 million for people infected directly or indirectly with Hepatitis C as a result of Blood received in Canada before 1986 or after July 1, 1990 (the "HCV Fund"). The settlement is based upon the Canadian Red Cross Society's Plan of Compromise and Arrangement which was approved by a vote of the creditors on August 30, 2000 and sanctioned by the Ontario Superior Court on September 14, 2000. The amount paid to individual claimants under the settlement will depend on how many class members apply for compensation. Only persons who are infected with the Hepatitis C virus will receive payments from this fund. No amounts will be paid to family members or others who may have a derivative claim relating to a person who is infected.

Claims may be made by the estate of a deceased class member. Claims on behalf of an estate, minor or other incompetent person must be filed by the personal representative of the class member with affidavits referred to below sworn by the personal representative. No class member will receive compensation from any of these settlements if he or she is entitled to compensation under the FPT 1986 - 1990 Settlement.

The full text of the settlement will be posted on the internet at [www.pre86hepc.com](http://www.pre86hepc.com). This Notice contains a summary of the key terms of the settlement. Some class members may receive more than one copy of this Notice.

To qualify for compensation, a primarily infected class member must provide proof that he or she has been accepted into the Ontario Hepatitis C Assistance Plan (OHCAP) or Quebec Hepatitis C Assistance Plan or:

1. a completed application in the prescribed form;
2. a report in the prescribed form from a physician treating the class member verifying that the class member has tested positive for Hepatitis C, and stating that, to the best of the physician's knowledge, the class member has never used intravenous drugs except under the direction of a licensed medical practitioner;
3. copies of medical, clinical, laboratory, hospital, or other records demonstrating that the claimant received blood or a blood product 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 class member indicating that given the nature of a procedure undergone by the class member in Canada during the class period, it is highly likely that blood or a blood product would have been received by the class member; and,
4. an affidavit sworn by the class member in the prescribed form deposing that:
  - a. the class member never used intravenous drugs except under the direction of a licensed medical practitioner;
  - b. the class member had not had any indications of Hepatitis C infection prior to the receipt of blood or a blood product during the class period; and
  - c. the class member is not entitled to compensation under the FPT 1986-1990 Settlement.

If a primarily infected class member is unable to fulfill the conditions regarding intravenous drug use in paragraphs 2 and 4(a) above, the class member may file further or other evidence with the Trustee to substantiate, on a balance of probabilities, the class member's infection with Hepatitis C through blood or a blood product received by the class member in Canada during the class period.

To qualify for compensation, a secondarily infected class member must provide proof that he or she has been accepted into the Ontario Hepatitis C Assistance Plan (OHCAP) or the Quebec Hepatitis C Assistance Plan or:

1. a completed application in the prescribed form;
2. proof of contact with a primarily infected class member which would suggest probable transmission of the Hepatitis C virus;

3. a report in the prescribed form from a physician treating the secondarily infected class member verifying that the class member has tested positive for Hepatitis C, and stating that, to the best of the physician's knowledge, the class member has never used intravenous drugs except under the direction of a licensed medical practitioner;
4. an affidavit sworn by the secondarily infected class member in the prescribed form deposing that:
  - a. the class member never used intravenous drugs except under the direction of a licensed medical practitioner;
  - b. the class member had not had any indications of Hepatitis C infection prior to the contact with the primarily infected class members or prior to the date on which the primarily infected class member was infected with Hepatitis C;
  - c. the class member is not entitled to compensation under the FPT 1986-1990 Settlement.

If a secondarily infected class member is unable to fulfill the conditions regarding intravenous drug use in paragraphs 2 and 4(a) above, the class member may file further or other evidence with the Trustee to substantiate, on a balance of probabilities, the class member's infection with Hepatitis C through a relationship with a primarily infected class member.

The HCV Fund will be open for 10 years with the monies paid out in three installments:

1. 50% of the HCV Fund will be paid to qualified class members who apply for compensation prior to the initial filing deadline;
2. 45% of the HCV Fund plus accrued interest will be paid to qualified class members who apply for compensation prior to the third anniversary of the initial filing deadline; and
3. the balance of the HCV Fund will be paid to qualified class members who apply for compensation prior to the tenth anniversary of the initial filing deadline.

For example, if 4000 claimants come forward prior to the initial filing deadline, and if the fund at that time has \$55 million (after fees and expenses have been paid), the first installment will be \$6,875. If a further 1000 claimants apply after the initial filing deadline but before the third anniversary of the initial filing deadline, those 1000 late claimants will receive \$6,875, and all 6,000 claimants will receive a further \$3,712.50, shortly after the third anniversary of the initial filing deadline. If 100 more claimants come forward after the third anniversary of the but before the tenth anniversary of the initial filing deadline, those 100 will receive \$8,800, then all claimants will receive a further \$196.81, for a total of 5100 claimants who each will receive a total of \$10,784.31. The following table provides 4 different scenarios for illustration purposes:

	Example 1	Example 2	Example 3	Example 4
Initial Fund Amount	\$55,000,000.00	\$ 55,000,000.00	\$ 55,000,000.00	\$ 55,000,000.00
Initial Number of claimants	4000	5000	4000	7000
First Distribution (half of the initial fund amount divided equally among the claimants)	\$ 6,875.00	\$ 5,500.00	\$ 6,875.00	\$ 3,928.57
Amount available on 3rd Anniversary	\$27,500,000.00	\$ 27,500,000.00	\$ 27,500,000.00	\$ 27,500,000.00
New Claimants between initial filing deadline and 3rd anniversary	500	1000	1000	3000
Total Equalization Payment to new claimants	\$ 3,437,500.00	\$ 5,500,000.00	\$ 6,875,000.00	\$ 11,785,714.29
Second distribution (equal shares of 90% of the available funds after all claimants have received the same first payment)	\$ 4,812.50	\$ 3,300.00	\$ 3,712.50	\$ 1,414.29
Amount available on 10th anniversary	\$ 2,406,250.00	\$ 2,200,000.00	\$ 2,062,500.00	\$ 1,571,428.57
New Claimants after 3 <sup>rd</sup> anniversary and before 10th anniversary	100	100	100	100
Total Equalization Payment to these new claimants	\$ 1,168,750.00	\$ 880,000.00	\$ 1,058,750.00	\$ 534,285.71
Amount available for Final distribution	\$ 1,237,500.00	\$ 1,320,000.00	\$ 1,003,750.00	\$ 1,037,142.86
Final distribution (equal shares to all claimants after all claimants have received the same first and second payments)	\$ 269.02	\$ 216.39	\$ 196.81	\$ 102.69
Total Number of Claimants	4600	6100	5100	10100
Total Per Capita amount	\$ 11,956.52	\$ 9,016.39	\$ 10,784.31	\$ 5,445.54

These examples are oversimplifications. They do not take account of the effect of interest running on the fund, which may increase the payments, or administrative expenses of the fund, which may decrease the payments. They also do not take into account certain further funds which may be added to the HCV Fund pursuant to the CRCS Plan of Compromise and Arrangement.

It is intended that each claimant will receive the same amount. Claimants who apply after the initial filing deadline may receive less if there are not sufficient funds to provide them with equal payments. Details on the methods for calculating the payments in each installment are in the HCV Fund Distribution Protocol, which is available on the internet at [www.pre86hepc.com](http://www.pre86hepc.com) or by contacting class counsel at the addresses listed at the end of this notice.

The CRCS and the Plan Participants do not admit any wrongdoing or liability on their part. The settlement is a compromise of disputed claims. The settlement is a partial settlement of the class actions. The class actions will continue against those defendants who are not participants to the settlement subject to the provisions of the Plan of Arrangement.

If the proposed settlement fails to be approved by the courts of British Columbia, Ontario and Quebec, the class actions will not be certified against the CRCS and the *Companiesâ Creditors Arrangement Act* proceedings relating to the CRCS will continue. Class counsel for the represent ative plaintiffs are recommending approval of the settlement.

## **Fees and Expenses**

### **Administrative Expenses**

Fees and expenses related to the administration of the settlement will be paid out of the HCV Fund. Every effort will be made to keep those expenses to a minimum.

### **Legal Fees and Disbursements**

Class counsel will be requesting class counsel fees for work done for the common benefit of class members. The total class counsel fees and disbursements in all of the class actions, exclusive of applicable taxes, will not exceed 10% of the HCV Fund (10% of \$63 million plus accrued interest). Class counsel in each of the 3 actions will be seeking fees and disbursements, exclusive of applicable taxes, of 3.33% of the HCV Fund, or approximately \$2.1 million each (3.33% of \$63 million plus accrued interest), for a total of approximately \$6.3 million.

The actual fees will be set by each of the courts. Legal fees, disbursements and applicable taxes thereon will be paid from the HCV Fund.

## **Settlement Approval Hearing**

The Courts will be asked to approve the settlement and class counsel fees at hearings on the following dates:

### **British Columbia**

January 24, 2001

**SUPREME COURT OF BRITISH COLUMBIA**

800 Smithe Street,

Vancouver British Columbia

**Quebec**

January 18 - 19 2001

**QUEBEC SUPERIOR COURT OF JUSTICE**

1, Notre Dame Street East, - Room 5.15

Montréal, Québec

**Ontario**

January 11-12, 2001

Ontario Superior Court Of Justice

361 University Avenue

Toronto, Ontario

These dates and locations are subject to change. If you are interested in attending or participating in the hearings, please confirm the dates and times by contacting class counsel at the telephone numbers listed below.

Class members who wish to make submissions to the court in support of or in opposition to the settlement or class counsel fees should provide notice to the court by sending a written submission to the appropriate class counsel at the address listed at the bottom of this notice no later than three business days prior to the applicable hearing date. Class counsel will then file all such submissions received with the appropriate court. The written submissions should include:

- ▶ the class member's name, address and telephone number
- ▶ the date and place that the class member received Hepatitis C contaminated blood or a blood product
- ▶ if the class member is secondarily infected, the date and place that the primarily infected person received Hepatitis C contaminated blood or a blood product
- ▶ a brief statement of the reasons that the class member is supporting or opposing the settlements
- ▶ whether the class member plans to attend at the settlement approval hearing

## **British Columbia Settlement**

A separate settlement has been reached with the Province of British Columbia which establishes a further fund of approximately \$6.5 million which will be used exclusively for members of the British Columbia class action.

The court will be asked to approve this settlement at the same time as it considers the CRCS settlement. British Columbia class counsel will seek a class counsel fee of 15% of the \$6.5 million British Columbia settlement fund, plus disbursements and applicable taxes, to be paid out of the British Columbia settlement fund.

The full text of the British Columbia Settlement Agreement is available on the internet at [www.kleinlyons.com](http://www.kleinlyons.com), or can be obtained by contacting British Columbia class counsel at the address listed at the end of this notice.

The settlement with the Province of British Columbia is conditional on a sufficient level of class member enrollment in the settlement; if there is a high number of opt-outs, the Province will have the right to terminate the settlement. The settlement is also conditional on the court granting a bar order which prevents non-settling defendants from pursuing indemnity claims against the Province. If the conditions



are not met or if the settlement with the Province of British Columbia is not approved by the British Columbia court, the class action will continue against British Columbia.

### Prison Blood Class Action

A class action has been commenced in Ontario on behalf of all persons in Canada who became infected with the Hepatitis C virus as a result of receiving blood products distributed by the CRCS which were manufactured using plasma collected in prisons in the United States. Under the CRCS Plan of Compromise and Arrangement, a fund of \$1 million has been established for the partial settlement of this class action as against the CRCS and the Plan Participants. Persons who can establish that they fall within this class will be entitled to an equal share of the \$1 million fund, to a maximum of \$10,000 each. Such entitlement is in addition to any sums payable to the person by the HCV Fund.

The Ontario court will be asked to approve this partial settlement at the same time as it considers the CRCS settlement. Class counsel will not be seeking any additional class counsel fee with respect to this settlement.

The provisions of this settlement can be found at paragraph 5.09 of the CRCS Plan of Compromise and Arrangement, which is available on the internet at [www.pre86hepc.com](http://www.pre86hepc.com) or by contacting class counsel at the addresses below.

### **Effect of the Settlements and Opting Out**

Class members who do not wish to participate in the class actions will be given an opportunity to opt out of the class actions. Class members who do not opt out of the class actions will be bound by the terms of the settlements, and will not be able to sue the CRCS or the Plan Participants with respect to any injury or damage stemming from an infection with the Hepatitis C virus as a result of receiving Blood. Further, class members who do not opt out of the class actions will be barred from recovering any amounts which might

be attributable to the negligence or other liability of the CRCS or any of the Plan Participants in any claims against other parties.

## **Additional Information**

This notice was prepared on December 20, 2000. Further information can be obtained on the internet at [www.pre86hepc.com](http://www.pre86hepc.com) or by contacting class counsel. Copies of the full settlement approval motion materials can be obtained from class counsel. Class counsel can be reached at the following addresses:

### **British Columbia**

Klein, Lyons

#### **Barristers & Solicitors**

1100 ö 1333 West Broadway Phone: (604) 874-7171

Vancouver, British Columbia Fax: (604) 874-7180

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[www.kleinlyons.com](http://www.kleinlyons.com)

### **Quebec**

Lauzon, Belanger

Avocats ö Barristers and Solicitors

511, Place DâArmes, bureau 200

Montreal (Quebec)

Phone: (514) 844-4646

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Fax: (514) 844-7009

[www.lauzonbelanger.qc.ca](http://www.lauzonbelanger.qc.ca)

## **All Provinces and Territories other than British Columbia and Quebec**

David Harvey

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