

**PRE-1986/POST-1990 HEPATITIS C
SETTLEMENT AGREEMENT**

Article One - General	Page
1.01 Definitions	7
1.02 No Admission of Legal Liability	17
1.03 No Additional Liability	18
1.04 Headings	18
1.05 Extended Meanings	18
1.06 No Contra Proferentem	18
1.07 Statutory References	18
1.08 Day for Any Action	19
1.09 Full and Final Release	19
1.10 Court Approval	19
1.11 Binding Nature of Agreement	19
1.12 Applicable Law	20
1.13 Final Order	20
1.14 Appendices	20
1.15 Currency	21
Article Two – Compensation to HCV Infected Class Members	Page
2.01 Eligibility - Primarily-Infected Class Member	21
2.02 Eligibility - Secondarily-Infected Person	22
2.03 Additional Proof	23
2.04 Compensation to Approved HCV Infected Class Members	24
2.05 Damages for Past Loss of Income	26
2.06 Past Loss of Services in the Home	30
2.07 Past Economic Loss and Dependents Fund	30
Article Three – Compensation for HCV Infected Class Members Who Have Died	Page
3.01 Eligibility – HCV Infected Class Members Who Have Died	31
3.02 Compensation if Deceased Prior to January 1, 1999	34
3.03 Compensation if Deceased on or after January 1, 1999	36
3.04 When Compensation Payable	37

Article Four – Compensation to Dependants and Family Members **Page**

4.01 Eligibility – Family Member	37
4.02 Compensation to Approved Family Members	38
4.03 Eligibility - Dependant	39
4.04 Compensation to Dependants	39
4.05 Limitation	40

Article Five – Compensation - Miscellaneous **Page**

5.01 First Claim Deadline	40
5.02 Deductions	41
5.03 Duration	42
5.04 Traceback Procedure	42
5.05 HCV Personal Representative of Minor or Incompetent	43
5.06 Protocol and Standard Operating Procedures	44
5.07 Claims Experience Premium	45
5.08 Indexing and Interest	45
5.09 Sufficiency of the Fund and Disposition of Surplus	46
5.10 Compensation for HIV Co-Infected Persons	46
5.11 Thalassemia Major	47
5.12 Status of Alive or Deceased	47
5.13 Compensation under one hundred dollars (\$100.00)	48

Article Six – Funding **Page**

6.01 Funding	48
6.02 Monthly Payments for Compensation Plan	48
6.03 Claims by Opt-out Persons	48
6.04 Payments for Class Counsel	49
6.05 Payments for Administration Costs	49

Article Seven – The Trustee and Trust Fund **Page**

7.01 Trust	50
7.02 Trustee	50
7.03 Trustee Fees	51
7.04 Nature of Trust	51

7.05	Legal Entitlements	52
7.06	Records	52
7.07	Quarterly Reporting	52
7.08	Annual Reporting	52
7.09	Method of Payment	53
7.10	Additions to Capital	53
7.11	Tax Elections	53
7.12	Canadian Income Tax	53
7.13	Investment Advisors	54

Article Eight – Administration **Page**

8.01	Administration	54
8.02	Decisions of the Administrator	56
8.03	Administrative Fees and Expenses	56
8.04	Calculation and Notice of Payments	56
8.05	Class Counsel	57

Article Nine – Character of Payments **Page**

9.01	Canadian Income Tax	57
9.02	Federal Social Benefits	58

Article Ten – Approval Orders **Page**

10.01	Approval Orders	59
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Article Eleven – Court Materials **Page**

11.01	Court Materials	60
-------	-----------------	----

Article Twelve – Notice **Page**

12.01	Notice	60
-------	--------	----

Article Thirteen – Releases **Page**

13.01	Releases	61
13.02	Dismissal of Actions	61
13.03	Cessation of Litigation	61

Article Fourteen – Class Counsel Fees	Page
14.01 Legal Fees and Disbursements	62
14.02 Fees Calculation	63
14.03 Court Approval of Fees	63
14.04 Payment of Fees	64
Article Fifteen – Indemnification and Subrogation	Page
15.01 Indemnification	64
15.02 Subrogation	64
Article Sixteen – Appeal Process	Page
16.01 Appeal Process	65
Article Seventeen – Conditions, Amendment and Termination	Page
17.01 Agreement Conditional	65
17.02 Amendments	65
17.03 Termination of Agreement	66
Article Eighteen – Miscellaneous	Page
18.01 No Assignment	66
18.02 Compensation Inclusive	66
18.03 Entire Agreement	66
18.04 Benefit of the Agreement	66
18.05 Information to Other Hepatitis C Compensation Programs	67
18.06 Counterparts	67
18.07 Notices	67

**PRE-1986/ POST-1990 HEPATITIS C
SETTLEMENT AGREEMENT**

THIS AGREEMENT is made as of the ~~14th~~ day of ~~December~~ 2006

B E T W E E N:

THE ATTORNEY GENERAL OF CANADA

-and-

EDWARD KILLOUGH, PATRICIA NICHOLSON, IRENE FEAD, DAPHNE MARTIN, DEBORAH LUTZ and MELANIE CREHAN, plaintiffs in the British Columbia Class Action, MICHAEL McCARTHY, CHRISTINE McCARTHY, DEREK MARCHAND, plaintiffs in the Ontario Class Action, GUY DESJARDINS and JEAN ROCHON, plaintiffs in the Quebec Class Action, SHIRLEY ADRIAN, DEBBIE ANDERSON, RICHARD EDWARD AUTEN, JAMES EDGAR BAKER, CONSTANCE DOREEN BAKER, JEFF BEESTON, ISABELL BRESSE, JOHN BRESSE, HARRY CHICHAK, BRIAN EDWIN FERGUSON, RON GEORGE, JANICE PATRICIA HAMMOND, DELORES HICKMOTT, GARY HICKMOTT, JAMES MILTON JOBE, BRIAN W. JOHNSON, WENDY LEE RAMEY, MARLENE DOROTHY KEEP, DENNIS KEEP, CAROL DIANNE KNOTT, BYRON KNOTT, LAURA CATHERINE KRISTIANSON, RALPH SAMUEL KRISTIANSON, KIMBERLY ANN LEBEUF, ALEXANDER PATRICK NOWOSAD, ELENA RICIOppo, DALVINO RICIOppo, SHANNON RICKETTS, KEVIN ROE, KATHY ROMANIW, ELLEN SANDERSON, JEAN DARLENE SNIPES, RICHARD JOSEPH LIPSCOMBE, DEBORAH ANNE STABRYLA, ELIZABTH TREAU, GUISEPPE VOLPE and JUNE VOLPE, plaintiffs in the Alberta Class Action (collectively the "Class Action Representative Plaintiffs").

WHEREAS:

A. The Parties wish to settle all outstanding claims against Canada, including Charter Claims, relating to or arising from the infection of persons with Hepatitis C through the blood system during the Class Period in a single, pan-Canadian settlement;

B. Canada entered into a Memorandum of Understanding dated November 17, 2005 with Class Counsel for those Canadians infected with Hepatitis C during the Class Period, committing it to compensate the Class Members according to eligibility, categories and amounts to be negotiated;

C. The Canadian Red Cross Society has settled claims with some Class Members;

D. Some Provincial governments have provided compensation to some Class Members;

E. Canada and the Provinces and Territories have previously settled class actions with persons infected with Hepatitis C through the blood system in Canada between January 1, 1986 and July 1, 1990;

F. Canada's contribution to the 1986-1990 settlement was 8/11ths of the total compensation fund;

G. A Framework Agreement, based on the principles of parity with the 1986-1990 settlement, the efficient delivery of compensation to Class Members and the minimization of administrative delay and expense was signed in counterparts by the Parties on June 23, 2006;

H. The Parties, subject to the Approval Orders, have agreed to a present value approach whereby eligible Class Members will receive one time lump sum payments based on current disease level and the probability of disease progression;

I. Class Counsel and the representative plaintiffs, subject to the Approval Orders, agree that the outstanding Class Actions be settled on the terms and conditions contained in this Agreement, as submitted to the appropriate Courts for approval.

THEREFORE, in consideration of the premises and the covenants and agreements herein contained, the Parties agree that, subject to the approval of this Agreement by the Courts, all actions, causes of actions, liabilities, claims and demands whatsoever of the Class Members, including Charter Claims, relating to or arising from the infection of persons with Hepatitis C through the blood system during the Class Period, are to be settled on the terms set out in this Agreement.

Article One General

1.01 Definitions

In this Agreement, the following terms will have the following meanings:

“1986-1990 Hepatitis C Settlement Agreement” means the agreement dated June 15, 1999 entered into between Canada, the Provinces, the Territories and the representative plaintiffs in class actions brought on behalf of people infected with Hepatitis C through the blood system in Canada between January 1, 1986 and July 1, 1990, and includes all existing Schedules, Appendices and Approval Orders;

“Administrator” means the administrator appointed from time to time by the Courts pursuant to this Agreement;

“Approval Date” means the date when the last Approval Order becomes final, provided there are no material differences in the Approval Orders approved by the Courts;

“Approval Orders” means the judgments or orders of the Courts certifying the Class Actions and approving this Agreement as submitted, as fair, reasonable and in the best interests of the Class Members for the purposes of settlement of the Class Actions pursuant to the applicable class proceedings legislation, the common law or Quebec civil law;

“Approved Dependant” means a Dependant whose Claim made pursuant to Section 4.03 has been accepted by the Administrator;

“Approved Family Member” means a Family Member referred to in clause (a) of the definition of Family Member as defined herein, whose

Claim made pursuant to Section 4.01 has been accepted by the Administrator;

“Approved HCV Infected Class Member” means an HCV Infected Class Member whose Claim has been accepted by the Administrator;

“Approved HCV Personal Representative” means an HCV Personal Representative whose claim made pursuant to Section 3.01 or Section 5.05 has been accepted by the Administrator;

“Average Industrial Wage in Canada” means the Average Weekly Earnings, unadjusted for seasonal variation for all of Canada, as published in Statistics Canada’s on-line statistical data base created from The Canadian Socio-Economic Information Management System (CANSIM) data base (data series v1558664 from Table 281-0026 as of November 2006), or any successor data base, for the most recent period for which such information is published at the date the determination provided for in Section 2.05 is to be made;

“Blood” means:

(a) in the case of Primarily-Infected Persons, except those Primarily-Infected Persons who have or had Thalassemia Major, whole blood and the following blood products: packed red cells, platelets, plasma (fresh frozen and banked), white blood cells and cryoprecipitate. Blood does not include Albumin 5%, Albumin 25%, Factor VIII, Porcine Factor VIII, Factor IX, Factor VII, Cytomegalovirus Immune Globulin, Hepatitis B Immune Globulin, Rh Immune Globulin, Varicella Zoster Immune Globulin, Immune Serum Globulin, (FEIBA) FEVIII Inhibitor Bypassing Activity, Autoplex (Activate Prothrombin Complex), Tetanus Immune Globulin, Intravenous Immune Globulin (IVIG) and Antithrombin III (ATIII); and

(b) in the case of Primarily-Infected Hemophiliacs and those Primarily-Infected Persons who have or had Thalassemia Major, whole blood and blood products including packed red cells, platelets, plasma (fresh frozen and banked), white blood cells and cryoprecipitate and clotting factor products including Factor VII, Factor VIII and Factor IX, supplied, directly or indirectly, by the Canadian Red Cross Society. Blood does not include Albumin 5%,

Albumin 25%, Cytomegalovirus Immune Globulin, Hepatitis B Immune Globulin, Rh Immune Globulin, Varicella Zoster Immune Globulin, Immune Serum Globulin, Tetanus Immune Globulin, Intravenous Immune Globulin (IVIG) and Antithrombin III (ATIII);

“Business Day” means a day other than a Saturday or a Sunday or a day observed as a holiday under the laws of the Province or Territory in which the person who needs to take action pursuant to this Agreement is situated or a holiday under the federal laws of Canada applicable in the said Province or Territory;

“Canada” means the Government of Canada and the Attorney General of Canada;

“Charter Claims” means any claim, demand, actions or proceeding made pursuant to the *Canadian Charter of Rights and Freedoms, Constitution Act, 1982*, and without limiting the generality of the foregoing includes any claim whatsoever brought by a Class Member pursuant to s. 15 of the *Canadian Charter of Rights and Freedoms, Constitution Act, 1982* in any way relating to or arising from the infection of a Class Member with Hepatitis C through the blood system during the Class Period;

“Child” includes:

- (a) an adopted child;
- (b) a child conceived before and born alive after his or her parent's death; or
- (c) a child to whom a person has demonstrated a settled intention to treat as a child of his or her family;

but does not include a foster child placed in the home of an HCV Infected Class Member for valuable consideration;

“Claim” means a claim made and a claim that may be made in the future pursuant to the provisions of this Agreement;

“Class Actions” mean collectively the class actions listed in Schedule “A” attached hereto;

“Class Counsel” means the law firms of Klein Lyons, Roy Elliott Kim O’Connor, Lauzon Belanger, Kolthammer Batchelor Laidlaw, Marshall Attorneys, and Docken & Company, and such further or other lawyers or law firms and their successors and assigns as may be appointed by the Courts from time to time;

“Class Members” means all Primarily-Infected Class Members, all Secondly-Infected Persons, all HCV Personal Representatives and all Family Members and Dependants, but excludes all persons who opt out, or are deemed to have opted-out, of a Class Action;

“Class Period” means collectively the period from January 1, 1958 to December 31, 1985 and the period from July 2, 1990 to September 28, 1998, excluding the period from January 1, 1986 to July 1, 1990;

“Cohabit” means to live together in a conjugal relationship, whether within or outside marriage;

“Compensation Fund” means the sum of one billion, twenty-three million, four hundred and seventy five thousand five hundred and seventy-five dollars (\$1,023,475,575.00), which is comprised of nine hundred and sixty-two million dollars (\$962,000,000.00) for Class Member compensation, twenty million dollars (\$20,000,000.00) for the costs of administering the settlement, and thirty-seven million, two hundred and ninety thousand dollars (\$37,290,000.00) for class counsel fees, two million two hundred and thirty-seven thousand four hundred dollars (\$2,237,400.00) for GST on class counsel fees, one million three hundred seventy-eight thousand one hundred seventy-five dollars (\$1,378,175.00) for PST on class counsel fees and five hundred thousand (\$500,000.00) for disbursements, thirty thousand (\$30,000.00) for GST on disbursements and forty thousand (\$40,000.00) for PST on disbursements;

“Compensation Plan” means the plan to provide compensation to Class Members for claims arising from or related to the infection of any HCV Infected Class Member through the blood system during the Class Period as set out in this Agreement;

“Courts” mean collectively the Supreme Court of British Columbia, the Superior Court of Justice for Ontario, the Superior Court of Quebec, and the Court of Queen’s Bench of Alberta;

“Dependant” means a Family Member of an HCV Infected Class Member referred to in clauses (a) and (c) of the definition of a Family Member in this Agreement to whom that HCV Infected Class Member was providing support or was under a legal obligation to provide support on the date of the HCV Infected Class Member’s death;

“EAP” means the HIV Extraordinary Assistance Plan announced by the government of Canada on December 14, 1989;

“Family Member” means:

- (a) the Spouse, Child, Grandchild, Parent, Grandparent or Sibling of an HCV Infected Class Member;
- (b) the Spouse of a Child, Grandchild, Parent or Grandparent of an HCV Infected Class Member;
- (c) a former Spouse of an HCV Infected Class Member;
- (d) a Child or other lineal descendant of a Grandchild of an HCV Infected Class Member;
- (e) a person who Cohabited with an HCV Infected Class Member for a period of at least one year with that HCV Infected Class Member immediately before his or her death;
- (f) a person who Cohabited with an HCV Infected Class Member at the date of the HCV Infected Class Member's death and to whom that HCV Infected Class Member was providing support or was under a legal obligation to provide support on the date of the HCV Infected Class Member 's death; and
- (g) any other person to whom an HCV Infected Class Member was providing support for a period of at least three years immediately prior to the HCV Infected Class Member's death;

unless any person described above opts out of the Class Action in which he or she would otherwise be a Class Member;

“Grandchild” means the Child of a Child;

“Grandparent” means the Parent of a Parent;

“HCV” and **“Hepatitis C”** mean the Hepatitis C virus;

“HCV Antibody Test” means a blood test performed in Canada using a commercially available assay acceptable to the Administrator demonstrating that the HCV antibody is present in the blood of a person;

“HCV Drug Therapy” means interferon or ribavirin, used alone or in combination, or any other treatment that has a propensity to cause adverse side effects and that has been approved by the Courts;

“HCV Infected Class Member” means collectively Primarily-Infected Class Members and Secondarily-Infected Persons. No person is an HCV Infected Class Member for the purposes of this Agreement if he or she is a Primarily-Infected Person, Primarily-Infected Hemophiliac, or Secondarily-Infected Person under the 1986-1990 Hepatitis C Settlement Agreement;

“HCV Infected Opt-Out Person” means a person who would otherwise be an HCV Infected Class Member but is not because he or she is an Opt-out Person;

“HCV Personal Representative” means the Personal Representative of an HCV Infected Class Member, whether the HCV Infected Class Member is deceased, a minor or mentally incompetent, who does not opt out of a Class Action or is not deemed to have opted-out;

“HIV” means the human immunodeficiency virus;

“HIV Secondarily-Infected Person” means a person who is entitled to receive compensation under Schedule C of the 1986-1990 Hepatitis C Settlement Agreement;

“Implementation Date” means the date 30 days after the Approval date;

“Investment Advisors” means the investment advisors and their successors appointed by the Courts from time to time pursuant to the provisions of this Agreement;