IN THE MATTER OF A REFERENCE PURSUANT TO THE HEPATITIS C 1986-1990 CLASS ACTION SETTLEMENT AGREEMENT
(Parsons et al. v. The Canadian Red Cross et al.)
Court File No. 98-CV-141369)

BETWEEN:

Claimant File 712238

- and -

The Administrator

(On a motion to oppose confirmation of the decision of Lisa C. Munro, released January 9, 2025)

BEFORE: Justice Benjamin T. Glustein

APPEARANCES: Claimant
Belinda A. Bain, for the Fund Counsel for Ontario
Luisa J. Ritacca and Myles S. Goodman-Vincent, for Monitor for the Court

HEARD: April 25, 2025

DATE: May 27, 2025

REASONS FOR DECISION

Nature of the Motion

[l] This is a motion to oppose confirmation of the decision of a Referee related to the administration of a Settlement Agreement for the Hepatitis C virus ("HCV") Class Action. Under the Settlement Agreement, approved by this court, individuals infected with 1--ICV through a blood transfusion received in Canada during the class period were entitled to varying degrees of compensation. In certain cases, family members were also entitled to compensation.

[2] In 2017, this court approved the HCV Late Claims Benefit Plan for Class Members who missed the deadline and did not meet the exceptions to the deadline.

[3] In 2018, the Claimant brought a claim on behalf of her late aunt, who was infected with HCV and approved as a "Primarily Infected Person" ("PIP") under the plan. This claim was approved in 2021. Later, the Claimant in 2023 made a claim for her grandfather as a

Dependant for loss of services and support.[1] However, the Claimant's grandfather died in 2019.

[4] The Administrator denied the Dependant's claim for compensation. The Administrator told the Claimant that a deceased approved Dependant does not qualify for loss of support as they no longer require financial support. The Administrator also informed the Claimant that the Dependant cannot apply for loss of services because he has passed away.

[5] The Claimant appealed the Administrator's denial to a Referee. The Referee dismissed the Claimant's appeal. The Claimant now challenges that decision by opposing confirmation of the Referee's decision.

[6] I dismiss the motion to oppose confirmation of the Referee's decision. I confirm the disposition of the Referee's decision, but for reasons different than those provided by the Referee.

Facts

[7] On October 22, 1999, Justice Winkler approved a Settlement Agreement for the HCV Class Action for persons infected with HCV through a blood transfusion within the class period of January 1, 1986 to July 1, 1990.

[8] The Settlement Agreement established plans for compensation — namely the Transfused HCV Plan and the Hemophiliac HCV Plan.

[9] The Transfused HCV Plan (the "8690 Plan") set out a process to provide compensation to persons who were infected with HCV through a blood transfusion received in Canada during the class period and secondarily-infected spouses, secondarily-infected children, and certain family members, including Dependant family members who meet the applicable criteria.

[10] On June 30, 2010, the deadline for the 8690 Plan ended.

[11] The PIP contacted the Administrator on April 19, 2011. However, she was informed that the deadline under the 8690 Plan had passed.

[12] On November 28, 2017, Justice Perell approved the HCV Late Claims Benefit Plan (the "Late Claims Plan"). The Late Claims Plan was for those class members unable to claim under the original plans because they did not apply before June 30, 2010 and did not otherwise meet the deadline exception requirements.

[13] On December 20, 2017, the PIP passed away.

[14] After the PIP's death, the Claimant found documents relating to the PIP's claim and contacted the Administrator on February 20, 2018. According to the Claimant's notes she faxed the Late Claim Request form on March 6, 2018, and mailed a copy on March 13, 2018. However, at the time she did not have formal status as the PIP's representative.

[15] The Administrator received the Late Claim Request form on March 13, 2018.

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[1] In this decision, I refer to the Claimant's aunt as the PIP and her grandfather as the Dependant. I intend no disrespect in doing so. This is the terminology used in the Referee's decision and from the plans.

[16] On April 17, 2018, a court-appointed Late Claims Referee allowed the late claim to proceed, but did not decide the entitlement ofthe PIP's estate. Specifically, the Late Claims Referee, Referee Devins, stated "I have only decided that an application form to file a Late Claim should be issued. . . I have not considered whether the Estate is eligible to receive compensation, that decision will be made by the Administrator upon receiving and reviewing the Late Claim Application Form with the required supporting documents."

[17] The Administrator's records include the following entry dated April 18, 2018: "Referee Decision received, and the claim may proceed. Awaiting final approval of forms".

[18] According to the Claimant, she did not receive this package and was not notified about the Late Claims Referee's decision. Referee Munro found that the Administrator did not notify the Claimant that the late claim request had been granted.

[19] By 2018, the Administrator's file suggests that the PIP's Claim was traversed from the Late Claims Plan to the 8690 Plan. The Administrator's record contains the following entry dated November 6, 2018: "Claim in 86-90 based on date of death of PIP-Request form scanned to ATF ["Add to File]".

[20] Claim #70157 refers to the original claim number assigned to the PIP under the Late Claims Plan. Claim #20090 refers to the claim number assigned to the PIP when it was traversed to the 8690 Plan. Finally, Claim #712238 — the claim in connection with this review — is the claim number for the Dependant's estate made under the Late Claims Plan.

[21] On February 23, 2019, the Dependant died.

[22] On July 9, 2019, the Claimant followed up with the Administrator regarding the PIP's claim. The Claimant spoke with the Nurse Reviewer who told the Claimant that the Administrator did not have a Late Claim Request Form from the Claimant. However, the Nurse Reviewer was mistaken because the form was eventually located under the original Claim #70157 records. The Claimant re-sent the Late Claim Request form.

[23] On July 17, 2019, the Nurse Reviewer spoke to the Claimant and inquired if the Initial Claims Package was received. the Nurse Reviewer sent the Initial Claims Package to the Claimant.

[24] On August l, 2019, the Claimant received the Initial Claims Package.

[25] As part of the claims process, "lookback" and "traceback" procedures were conducted. A "lookback" is a request to the hospital for records showing the unit(s) of blood the PIP was transfused with. This information is then sent to the Canadian Blood Services (CBS) for a "traceback", whereby CBS searches its records to see if the unit(s) were infected with HCV. Under the 8690 Plan, the "traceback" procedure is defined as "a targeted search for and investigation of the donor and/or the units of Blood received by a HCV infected Person."[2]

[26] On August 22, 2019, the Estate Executor of the PIP received correspondence from the University Health Network (UHN), which attached summarized transfusion records and a positive Hep-C test in relation to the PIP. However, the letter from UHN stated that UHN

[2] See Appendix A, Transfused HCV Plan, s. 1.01 ("Traceback Procedure").

"does not have information on whether any of the products mentioned were contaminated with Hepatitis". On appeal before the Referee, the parties agreed that this constituted a lookback.

[27] On November 21, 2019, the Claimant sent the Initial Claims Package to the Administrator.

[28] According to the Claimant's diary entry for December 31, 2019, she notes: "Hep c form notarized + letter allowing me complete access to claim on dads behalf $45.18".

[29] The Administrator's records dated January 20, 2020 state:

> DA9/Rep - No Proof of right to act for estate. +PCR test dated 1999 is in tif - 1298880. Tran 5 indicates transfusions from 1989. Nephrologist who has known claimant since 2012 has indicated no to ORF, Deficiency [sic] letter sent. Claim sent for TB.

[30] The Administrator's notes show that in January 2020 the PIP transfusion information was sent to CBS. On March 20, 2020, the Claimant emailed the Administrator "to confirm that all necessary documents" for the claim for the PIP had been received and to "confirm a timeline for the review of [the PIP's] documents to determine if she is approved to proceed."

[31] That same day, the Nurse Reviewer responded: "We received the prof [sic] to act on behalf of the estate and are awaiting the results of the traceback. Will [sic] the service interruptions we have been experiencing recently I am not sure when we will hear back for the Canadian Blood Services. "

[32] On May 27, 2020, the Nurse Reviewer explained to the Claimant that the file was sent for traceback in January 2020 and that "it can take up to 6 months for the CBS to finish their searches." However, the Nurse Reviewer explained that due to COVID, "there is a good chance it will run past the 6 month period." She informed the Claimant that "[a]s soon as we hear [from] CBS, we will be calling you".

[33] The Administrator notes show that the Claimant and the Administrator communicated in October and November 2020 regarding the status of the traceback and that the Administrator followed up with CBS in November.

[34] The Administrator's notes show that they received the CBS traceback final report on February 1 1, 2021. The Claimant's notes confirm that "Hep C called" to update the Claimant on this day.

[35] Both the Administrator and the Claimant's notes show that further forms were sent to the Claimant on March 5, 2021. The Claimant's notes show she mailed the forms on March 15, 2021.

[36] On March 25, 2021, the Administrator's notes state "Claim APPROVED at Level 2 and HCV factor Accepted".

[37] Additional communications took place in March, April and May regarding further medical information.

[38] On May 4, 2021, the Full and Final Release was received and accepted in relation to the PIP's level 2 claim. The Referee accepted this date as constituting the formal approval of the Claimant's claim on behalf of the PIP for compensation and the PIP becoming a class member.

[39] After this, further exchanges took place regarding the degree and scope of compensation of the PIP's claim. The Administrator's notes suggest this concerned a disability claim and the level of the PIP's claim.

[40] The Administrator's notes indicate that the PIP's Loss of Income Claim was approved on August, 3, 2022: "LOI Approved as per text below".

[41] In 2023, the Claimant submitted a Late Claim Request form for the Dependant's claim for loss of services and loss of support, which was received on October 30.

[42] On March 5, 2024, the Claimant was notified that the Late Claims Referee allowed the Claimant's request to file a late claim. The Initial Claims forms were then sent to the Claimant.

[43] The Claimant returned the forms, and the Administrator received them on March 20, 2024.

[44] In June 2024, the Administrator denied the Claimant's claim on behalf of the Dependant on the basis that a deceased Dependant cannot claim for loss of services and loss of support.

[45] The Claimant appealed the Administrator's decision. The Claimant's Request for Review was received on July 29, 2024.

[46] On or about August 13, 2024, Referee Munro was appointed to hear the Appeal.

[47] A preliminary meeting took place on September 19, 2024, with subsequent case conferences held on November 1 and 14, 2024.

[48] The hearing before the Referee took place on December 2, 2024.

[49] The Referee released her decision on January 9, 2025.

The Referee's Decision

[50] The Referee dismissed the Claimant's appeal of the Administrator's decision to deny compensation to the Dependant under the HCV Late Benefit Plan.

[51] The Referee framed the appeal before her as two issues: (a) was the Administrator correct to deny the Dependant's claim; and (b) did the Administrator's delay in processing the PIP's claim prevent the Dependant's claim from being brought while he was still alive.

Issue I

[52] The Referee found that based on the language of the Plans, the Administrator was correct to deny the Dependant's claim for compensation, brought by the Claimant as his personal representative.

[53] First, the Referee found that a Late Claim Dependant can only become approved once the Claim of the PIP (or the PIP's personal representative) has been approved, because a Late Claim Dependant must provide the same information and documents required by the PIP.

[54] Second, the Referee found that a Dependant must be alive to receive compensation. She stated that a claim may be made under the plans by the personal representative on behalf of an estate of the PIP, but not the personal representative of a deceased Dependant. She also reasoned by way of analogy that where an Approved Late Claim Dependent is a spouse, benefits are only available so long as that spouse is alive. Therefore, the Referee rejected the Claimant's argument that the Dependant's estate is entitled to compensation for the period after the PIP passed but before the Dependant passed away.

Issue 2

[55] Regarding the question of delay alleged to have been caused by the Administrator, the Referee noted that the parties did not refer her to a specific provision requiring the processing of the claim within a specified time. Nevertheless, she found that the processing of the PIP and Dependant's claims were not delayed by the Administrator. According to the Referee, there was no delay from the period of the court's approval of the Late Claim Plan to the PIP's death. Also, she found that any delay between the PIP's death and the death of the Dependant cannot be attributed to the Administrator.

[56] The Referee therefore upheld the decision of the Administrator and dismissed the Claimant's appeal of the Administrator's decision to deny compensation to the Dependant's estate.

Standard of Review

[57] The standard of review set out in *Jordan v. McKenzie* (1987), 26 C.P.C. (2d) 193 (Ont. H.C., aff'd (1990), 39 C.P.C. (2d) 217 (C.A.) applies to this motion. This standard has been adopted, in prior decisions under the Settlement Agreement arising out of this class proceeding, as the appropriate standard to be applied on motions by a Claimant opposing confirmation of a Referee's decision.[3]

[58] This *Jordan* standard of review provides that the reviewing court "ought not to interfere with the result unless there has been some error in principle demonstrated by the [Referee's] reasons, some absence or excess of jurisdiction, or some patent misapprehension of the evidence."

Position of the Parties

Claimant 's Position

[59] The Claimant seeks to overturn the Referee's decision. She argues that the Referee misapprehended key evidence and that her decision does not appreciate the significance of the Administrator's failures to properly and accurately document the files, which caused delay. The Claimant challenges the Referee's decision that the delays were not relevant to the outcome. The Claimant argues that the PIP's estate could not gather the necessary medical documentation

[3] Reasons for Decision of Winkler C.J.O, Claimant File 7518 dated March 25, 2010 (On a motion to oppose confirmation of the decision of Daniel Shapiro, Q.C., released July 13, 2006), at para. 14; Reasons for Decision of Perell J., Claimant File 7438, dated December 16, 2013 (On a motion to oppose confirmation of the decision of the Referee, C. Michael Mitchell, released on November 14, 2013), at para. 7; HCV Settlement Agreement Claim No. 11910, 2004 BCSC 1431, at para. 2.

without being notified that the Late Claim Request was granted or receiving the Initial Claims Package.

[60] The Claimant points to the Referee's acknowledgement that the Administrator had a duty to notify the PIP's estate when Referee Devins reached a decision on the Late Claim, but did not do so. She argues that the Administrator's failure to notify her of the Late Claim Referee's 2018 decision, coupled with administrative mismanagement, directly impacted the Claimant's ability to pursue compensation in a timely manner. She only saw the Late Claim Referee's decision through this appeal process.

[61] She also points to filing errors made by the Administrator, which she argues led to them incorrectly advising her of the 2018 decision. Key milestones and notes from Claim #70157 were not documented in Claim #20090. Specifically, the Claimant argues that the date on which the PIP's Late Claim Request was granted was missing from Claim #20090 and that this oversight caused significant delay.

[62] She also notes that Referee Munro incorrectly states at para. 89 of her reasons that the Initial Claims Package was sent in March 2018 when in fact this was when the Claimant sent the Late Claim Request form. The Claimant notes that it would be impossible for the Administrator to send the Initial Claims Package prior to the decision of Referee Devins, which was not made until April 18, 2018.

[63] The Claimant also cites to a report as evidence that Crawford Class Action Services was not returning class members' calls in a timely manner.

[64] The Claimant concedes that a claimant cannot seek compensation for both loss of support and loss of services during the same period.

Fund Counsel 's Position

[65] Fund Counsel requests that the Referee's Decision be upheld.

[66] Fund Counsel argues that the delays present here did not alter the outcome of the Dependant's claim. Even if the Claimant had received the Initial Claims package for the PIP's claim in March or April 2018, CBS could not have started a traceback until the hospital completed its lookback in August 2019, which was after the Dependant died. According to Fund Counsel, the real issue is whether it was reasonable to conclude that the PIP's claim would have been accepted prior to February 2019 with any certainty.

[67] While Fund Counsel agreed that Ms. Munro's statement at para. 89 that the Initial Claims Package was sent to the PIP in March 2018 appears to be inaccurate, this misstatement did not impact the Referee's ultimate conclusion. Fund Counsel submits that the Referee correctly notes in the remainder of the paragraph that the Claimant did not receive the Initial Claims Package until August 1, 2019.

[68] Fund Counsel also does not suggest that there was not a delay that is properly at the feet of the Administrator but noted that the Administrator is processing thousands of claims.

Analysis

[69] I confirm the disposition of the Referee's decision, but for different reasons than those provided by the Referee.

[70] I dismiss the appeal for two reasons.

Reason One: A Dependant Claim Cannot Be Brought After the Dependant 's Passing

[71] The language of the plans support that a Claimant cannot bring a claim as a personal representative on behalf of a deceased Dependant, after the Dependant's death.

[72] The plans set out in detail who can bring a claim for compensation. While s. 3.05 of the plans expressly provide for claims brought by personal representatives of an HCV infected person who has died, there is no analogous provision for a personal representative of a deceased Dependant.

[73] Rather, the language of the plans contemplates that Dependants themselves can advance their own Dependant claim:

(a) Section 3.06 of the plans, which deal with Dependant claims, does not provide for a personal representative to bring a claim on behalf of a deceased Dependant. The language of s. 3.06 is directed at a Dependant: "A person claiming to be a Dependant of a HCV Infected Person" must deliver the prescribed information to the Administrator.

(b) Section 6.01, which deals with compensation to Approved Dependants, similarly does not contemplate that claims can be brought by a personal representative of a deceased Dependant, after the Dependant's death.

(c) Section 6.03 under the plans also limit the claims that can be advanced by Dependants. For example, this section under the 8690 Plan states: "Dependants and other Family Members of a HCV Infected Person will only be entitled to make Claims pursuant to Sections 6.01 and 6.02 (or, in lieu thereof, under Section 5.01 (2)) and they will not be entitled to make any other Claims or to any additional or other compensation. Nothing in this Section will affect the personal Claim of a Spouse or Child who is also a HCV Infected Person."[4]

[74] Further, there are assignment limitations under the plans. Section 8.05 of the 8690 Plan states: "Any amount payable under this Plan cannot be assigned, without the written consent of the Administrator. "[5]

[4] See Appendix B for the materially similar provision at s. 6.03 of the HCV Late Claims Benefit Plan. For reference, s. 5.01 (2) deals with a payment provided to certain Claimants in full satisfaction of all claims, but such payment does not affect the personal claim of a Spouse or Child who is also a HCV Infected Person. Section 6.01 deals with compensation to Approved Dependants for loss of support and loss of services. Section 6.02 deals with compensation to approved family members for loss of guidance, care, and companionship.

[5] See Appendix B for the materially similar provision at s. 8.05 of the HCV Late Claims Benefit Plan.

[75] Here, the Claimant brought a Dependant claim years after the Dependant passed. Since I find that a Claimant cannot bring a claim as a personal representative on behalf of a deceased Dependant after the Dependant's death, I therefore uphold the dismissal of the Dependant claim.

[76] However, I note that I do not consider the question of whether a personal representative can bring a claim on behalf of a living Dependant or whether a personal representative can continue a claim on behalf of a Dependant, following their death. Those are not the facts before me.

[77] Further, given my conclusion that a Claimant cannot bring a claim as a personal representative on behalf of a deceased Dependant after the Dependant's death, I do not need to decide the issue of whether the Referee's finding that a PIP's claim must be approved before a Dependant's claim was correct.

Reason Two: The Administrator 's Delay Did Not Prevent the Dependant 's Claim from Being Brought While He was Still Alive

[78] Second, while I accept that there was some delay caused by the Administrator, accounting for this delay on balance would not have resulted in the Dependant's claim being brought before the Dependant's death.

[79] The Administrator should have notified the Claimant of Referee Devin's late claims decision and sent the Initial Claims Package, at least, reasonably soon after this decision was made. The Administrator's failure to notify the Claimant of the decision, along with the confusion arising from the traversing of the PIP's claim to the 8690 Plan did cause some delay that is properly at the feet of the Administrator.

[80] However, even if the claims were processed in the ordinary and proper course, with the Claimant receiving the Initial Claims Package in April 2018 — as soon as the Late Claims Referee released its decision — on balance, this would not have led to the bringing of the Dependant's claim before he passed on February 23, 2019. This is the case even accounting for the standard of a six-month delay for traceback instead of the longer delay caused by COVID. The relevant delays based on earlier receipt of the Initial Claims Package are taken based on the actual other delays in this particular case for the remaining steps in the claims process, which are not challenged insofar as Fund Counsel conceded that there was some delay properly at the feet of the Administrator. On that basis, the timeline for a claim if early receipt of the Initial Claims Package had been provided is illustrated in the chart below:

Event	**Facts**	**Hypothetical**
Claimant receives Initial Claims Package	August 1, 2019	April 18, 2018
Number of days	21 days	
Lookback completed	August 22, 2019	May 9, 2018

Number of days	91 days	
Initial Claims Package sent to Administrator	November 21, 2019	August 8, 2018
Number of days	60 days	
Information sent to the CBS	January 20, 2020	October 7, 2018
Number of days	388 days	6 months (based on evidence that, but for COVID, "it can take up to 6 months for the CBS to finish their searches").
Traceback completed	February 1 1, 2021	April 7, 2019
Number of days	82 days	
PIP's claim formally approved	May 4, 2021	June 28, 2019

[81] Accordingly, I find that the Administrator's delay ultimately did not prevent the Dependant's claim from being brought while he was still alive.

[82] For this reason, I do not need to decide whether the estate of a Dependant would be entitled to compensation if a claim is sought, but not yet approved, before the Dependant's death. Here, the Claim was brought after the Dependant's death.

[83] The Administrator must seek to process claims in a timely manner, and I appreciate the Claimant's frustration in this case. However, on the facts of this particular case, the delay on the part of the Administrator would not have resulted in the Dependant's claim being brought while he was still alive.

Result

[84] For these reasons, I dismiss the motion to oppose the Referee's decision.

B. Glustein J.

Appendix A — Relevant Provisions of the Tranfused HCV Plan

ARTICLE ONE

INTERPRETATION

1.01 Definitions

"Approved Dependant" means a Dependant whose Claim made pursuant to Section 3.06 has been accepted by the Administrator.

…

"Approved HCV Personal Representative" means a HCV Personal Representative whose Claim made pursuant to Section 3.05 has been accepted by the Administrator.

…

"Claim" means a claim made and a claim that may be made in the future pursuant to the provisions of this Plan.

…

"Dependant" means a Family Member of a HCV Infected Person referred to in clauses (a) and (c) of the definition of a Family Member in this Section 1.01 to whom that HCV Infected Person was providing support or was under a legal obligation to provide support on the date of the HCV Infected Person's death.

…

"HCV Infected Person" means a Primarily-Infected Person or a Secondarily-Infected Person.

"HCV Personal Representative" means the Personal Representative of a HCV Infected Person (whether deceased, a minor or mentally incompetent) who does not opt out of a Class Action.

…

"Personal Representative" includes, if a person is deceased, an executor, administrator, estate trustee, trustee or liquidator of the deceased or, if the person is a minor or mentally incompetent, the tutor, committee, Guardian or curator of the person.

…

"Primarily-Infected Person" means a person who received a Blood transfusion in Canada during the Class Period and who is or was infected with HCV unless:

(a) it is established on the balance of probabilities by the Administrator that such person was not infected for the first time with HCV by a Blood transfusion received in Canada during the Class Period;

(b) such person used non-prescription intravenous drugs, and such person has failed to establish on the balance of probabilities that he or she was infected for the first time with HCV by a Blood transfusion received in Canada during the Class Period; or

(c) such person opts out of the Class Action in which he or she would otherwise be a Class Member.

…

"Traceback Procedure" means a targeted search for and investigation of the donor and/or the units of Blood received by a HCV Infected Person.

ARTICLE THREE

REQUIRED PROOF FOR COMPENSATION

3.01 Claim by Primarily-Infected Person

(1) A person claiming to be a Primarily-infect ed Per son must deliver to the Administrator an application form prescribed by the Administrator together with:

(a) medical, clinical, laboratory, hospital, The Canadian Red Cross Society, Canadian Blood Services or Hema-Québec records demonstrating that the claimant received a Blood transfusion in Canada during the Class Period;

(b) an HCV Antibody Test report , PCR Test report or similar test report pertaining to the claimant;

(c) a statutory declaration of the claimant including a declaration (i) that he or she has never used nonprescription intravenous drugs, (ii) to the best of his or her knowledge, information and belief, that he or she was not infected with Hepatitis Non-A Non-B or HCV prior to 1 January 1986, (iii) as to where the claimant first received a Blood transfusion in Canada during the Class Period, and (iv) as to the place of residence of the claimant, both when he or she first received a Blood transfusion in Canada during the Class Perio d and at the time of delivery of the application hereunder.

(2) Notwithstanding the provisions of Section 3.01 (1)(a), if a claimant cannot comply with the provisions of Section 3.01 (1)(a), the claimant must deliver to the Administrator corroborating evidence independent of the personal recollection of the claimant or any person who is a Family Member of the claimant establishing on a balance of probabilities that he or she received a Blood transfusion in Canada during the Class Period.

(3) Notwithstanding the provisions of Section 3.01(1)(c), if a claimant cannot comply with the provisions of Section 3.01 (l)(c) because the claimant used non-prescription intravenous drugs, then he or she must deliver to the Administrator other evidence establishing on a balance of probabilities that he or she was infected for the first time with HCV by a Blood transfusion in Canada during the Class Period.

…

3.03 Additional Proof

If requested by the Administrator, a person claiming to be a HCV Infected Person must also provide to the Administrator:

(a) all medical, clinical, hospital or other such records in his or her possession, control or power;

(b) a consent authorizing t he release to the Administrator of such medical, clinical, hospital records or other health information as the Administrator may request;

(c) a consent to a Traceback Procedure;

(d) a consent to an independent medical examination;

(e) income tax returns and other records and accounts pertaining to loss of income; and

(f) any other information, books, records, accounts or consents to examinations as may be requested by the Administrator to deter mine whether or not a claimant is a HCV Infect ed Person or to process the Claim.

If any person refuses to provide any of the above information, documentation or other matters in his or her possession, control or power, the Administrator must not approve the Claim.

…

3.05 Claim by HCV Personal Representative of HCV Infected Person

(l) A person claiming to be the HCV Personal Representative of a HCV Infected Person who has died must deliver to the Administrator, within three years after the death of such HCV Infected Person or within two years aft er the Approval Date, whichever event is the last to occur, an application form prescribed by the Administrator together with:

(a) proof that the death of the HCV Infected Person was caused by his or her infection with HCV;

(b) unless the required proof has already been previously delivered to the Administrator:

(i) if the deceased was a Primarily-infected Person, the proof required by Sections 3.01 and 3.03; or

(ii) if the deceased was a Secondarily-Infected Person, the proof required by Sections 3.02 and 3.03; and

(c) the original certificate of appointment of estate trustee, grant of probate or of letters of administration or notarial will (or a copy thereof certified to be a true copy by a lawyer or notary) or such other proof of the right of the claimant to act for the estate of the deceased as may be required by the Administrator.

(2) A person claiming to be the HCV Personal Representative of a HCV Infected Person who is a minor or incompetent must deliver to the Administrator an application form prescribed by the Administrator together with:

(a) unless the required proof has already been previously delivered to the Administrator:

(i) if the HCV Infected Person is a Primarily-Infected Person, the proof required by Sections 3.01 and 3.03; or

(ii) if the HCV Infected Person is a Secondarily-Infected Person, the proof required by Sections 3.02 and 3. 03; and

(b) the court order or power (or a copy thereof certified to be a true copy by a lawyer or notary) or such other proof of the right of the claimant to act for the HCV Infected Person as may be required by the Administrator.

(3) Notwithstanding the provisions of Section 3.01(l)(b), if a deceased Primarily- Infected Person was not tested for the HCV antibody or HCV the HCV Personal Representative of such deceased Primarily-Infected Person may deliver, instead of the evidence referred to in Section 3.01 (I evidence of any one of the following:

(a) a liver biopsy consistent with HCV in the absence of any other cause of chronic hepatitis;

(b) an episode of jaundice within three months of a Blood transfusion in the absence of any other cause; or

(c) a diagnosis of cirrhosis in the absence of any other cause.

For greater certainty, nothing in this Section will relieve any claimant from the requirement to prove that the death of the Primarily-Infected Person was caused by his or her infection with HCV.

(4) Notwithstanding the provisions of Section 3.02(1)(b), if the HCV Personal Representative of a deceased Secondarily-Infect ed Per son cannot comply with the provisions of Section 3.02(1)(b), the HCV Personal Representative must deliver to the Administrator other evidence establishing on a balance of probabilities that such deceased Secondarily- Infected Person was infected with HCV.

(5) For the purposes of Sections 3.05 (1) and (2), the statutory declaration required by Sections 3.01(l)(c) and 3.02(1 must be made by a person who is or was sufficiently familiar with the HCV Infected Person to declare that to the best of his or her knowledge, information and belief the HCV Infected Person did not use nonprescription intravenous drugs and was not infected with Hepatitis Non-A Non-B or HCV prior to I January' 1986. If such a statutory declaration cannot be provided because the HCV Infected Person used non-prescription intravenous drugs, the HCV Personal Representative must deliver to the Administrator other evidence

establishing on a balance of probabilities that the Primarily-Infect ed Person was infected for the first time with HCV by a BIO od transfusion in Canada during the Class Period or the Secondarily-Infected Person was infected for the first time with HCV by his or her Spouse who is or was a Primarily-Infected Person or Opted-Out Primarily-Infected Person or by a Parent who is or was a HCV Infected Person or an Opted- Out HCV Infect ed Per son.

(6) If requested by the Administrator, the HCV Personal Representative must also provide to the Administrator:

(a) all medical, clinical, hospital or other such records in his or her possession, control or power,

(b) a consent authorizing the release to the Administrator of such medical, clinical, hospital records or other health information as the Administrator may request;

(c) a consent to a Traceback Procedure;

(d) a consent to an independent medical examination;

(e) income tax returns and other records and accounts pertaining to loss of income; and

(f) any other information, books, records, accounts or consents to examinations as may be requested by the Administrator to det ermine whether or not a person is a HCV Infected Person or to process the Claim.

If any HCV Personal Representative refuses to provide any of the above information, documentation or other matters in his or her possession, control or power, the Administrator must not approve the Claim.

3.06 Claim by Dependant

A person claiming to be a Dependant of a HCV Infected Person who has died must deliver to the Administrator, within two years after the death of such HCV Infected Person or within two years after the Approval Date or within one year of the claimant attaining his or her age of majority, whichever event is the last to occur, an application form prescribed by the Administrator together with:

(a) proof as required by Sections 3.05(I)(a) and (b) (or, if applicable, Section 3.05(3) or (4)) and 3.05(5) and (6), unless the required proof has been previously delivered to the Administrator; and

(b) proof that the claimant was a Dependant of the HCV Infected Person.

…

ARTICLE SIX

COMPENSATION To APPROVED DEPENDANTS AND APPROVED FAMILY MEMBERS

6.01 Compensation to Approved Dependants

(1) If a HCV Infected Person dies and the death was caused by his or her infection with HCV, the Approved Dependants of such HCV Infected Person will be entitled to be compensated for their loss of support. The loss of support is an amount each calendar year equal to 70% of the deceased HCV Infected Person 's Annual Loss of Net Income for such year until he or she would have attained the age of 65 years determined in accordance with 4.02(2), provided, however, that the annual amount payable under this provision will be reduced by an amount equal to 30% of the net

amount as calculated to allow for the personal living expenses of the HCV Infected Person, and provided further that, for purposes of calculating the annual amount payable under this provision, "Post-claim Net Income" will be computed without reference to clauses (A), (C) and (D) of the definition of "Post-claim Net Income" and that the words "the person" and "on account of illness or disability for the year" in clause (B) and the words "the person" in clause (E) of the definition of "Post-claim Net Income" were replaced with the words "the Dependants as a result of the death of the person".

(2) If a HCV Infected Person dies and the death was caused by his or her infection with HCV, the Approved Dependants of such HCV Infected Person living with such HCV Infected Person at the time of his or her death will be entitled to be compensated for the loss of the services of the HCV Infected Person in the home at the rate of S 1 2 per hour to a maximum of S240 per week.

(3) The amounts payable pursuant to Sections 6.01(1) or (2) will be allocated as the Approved

Dependants may agree or, failing any agreement, as the Administrator so determines based on the extent of support received by each of the Dependants prior to the death of the HCV Infected Person. Notwithstanding any of the provisions hereof, the Approved Dependants of a HCV Infected Person whose death was caused by his or her infection with HCV cannot claim compensation for loss of support and compensation for the loss of services in the home for the same period.

…

6.03 Limitation

Dependants and other Family Members of a HCV Infected Person will only be entitled to make Claims pursuant to Sections 6.01 and 6.02 (or, in lieu thereof, under Section 5.01 (2)) and they will not be entitled to make any other Claims or to any additional or other compensation. Nothing in this Section will affect the personal Claim of a Spouse or Child who is also a HCV Infected Person

…

ARTICLE EIGHT

CHARACTER OF PAYMENTS

8.05 No Assignment

Any amount payable under this Plan cannot be assigned, without the written consent of the Administrator.

Appendix B — Relevant Provisions of the HCV Late Claims Benefit Plan

ARTICLE ONE

INTERPRETATION

1.01 Definitions

…

"Approved Late Claim Dependant" means a Dependant whose Late Claim made pursuant to Section 3.06 has been accepted by the Administrator.

…

"Approved Late Claim HCV Infected Person" means a HCV Infected Person whose Late Claim made pursuant to Section 3.01 or 3.02, as the case may be, has been accepted by the Administrator

"Approved Late Claim HCV Personal Representative" means a HCV Personal Representative whose Late Claim made pursuant to Section 3.05 has been accepted by the Administrator.

…

"Dependant" means a Family Member of a HCV Infected Person referred to in clauses (a) and (c) of the definition of a Family Member in this Section 1.01 to whom that HCV Infected Person was providing support or was under a legal obligation to provide support on the date of the HCV Infected Person's death.

…

"HCV Infected Person" means a Primarily-infected Hemophiliac, a Primarily-Infected Person or a Secondarily Infected Person.

…

"HCV Personal Representative" means the Personal Representative of a HCV Infected Person (whether deceased, a minor or mentally incompetent) who did not opt out of a Class Action.

…

"Personal Representative" includes, if a person is deceased, an executor, administrator, estate trustee, trustee or liquidator of the deceased or, if the person is a minor or mentally incompetent, the tutor, committee, Guardian or curator of the person.

…

"Primarily-infected Person" means a person who received a Blood (Transfused) transfusion in Canada during the Class Period and who is or was infected with HCV unless:

(a) it is established on the balance of probabilities by the Administrator that such person was not infected for the first time with HCV by a Blood (Transfused) transfusion received in Canada during the Class Period;

(b) such person used non-prescription intravenous drugs, and such person has failed to establish on the balance of probabilities that he or she was infected for the first time with HCV by a Blood (Transfused) transfusion received in Canada during the Class Period; or

(c) such person opted out of the Class Action in which he or she would have otherwise been a Class Member.

"Traceback Procedure" means a targeted search for and investigation of the donor and/or the units of Blood (Transfused) received by a Primarily-Infected Person or a Secondarily-Infected Person who makes a Transfused Late Claim.

…

ARTICLE THREE

ELIGIBILITY TO MAKE A LATE CLAIM AND REQUIRED PROOF FOR COMPENSATION

3.01A Eligibility to make a Late Claim

A person desiring to make a Late Claim under this HCV Late Claims Benefit Plan must be determined to be eligible to make a Late Claim in accordance with the provisions of Appendix E of this HCV Late Claims Benefit Plan or be a person referred to in clause (a) of the definition of Family Member in Section 1.01 who is related to a HCV Infected Person whose Late Claim was accepted by the Administrator under this HCV Late Claims Benefit Plan.

3.01Tran Late Claim by Primarily-infected Person

(l) A person claiming to be a Primarily-Infected Person who is determined eligible to make a Late Claim pursuant to Appendix E of this HCV Late Claims Benefit Plan must deliver to the Administrator a Late Claim application form prescribed by the Administrator together with:

(a) medical, clinical, laboratory, hospital, The Canadian Red Cross Society, Canadian Blood Services or Hema-Quebec records demonstrating that the claimant received a Blood (Transfused) transfusion in Canada during the Class Period;

(b) a HCV Antibody Test report, PCR Test report or similar test report pertaining to the claimant;

(c) a statutory declaration of the claimant including a declaration (i) that he or she has never used nonprescription intravenous drugs, (ii) to the best of his or her knowledge, information and belief, that he or she was not infected with Hepatitis Non-A Non-B or HCV prior to 1 January 1986, (iii) as to where the claimant first received a Blood (Transfused) transfusion in Canada during the Class Period, and (iv) as to the place of residence of the claimant, both when he or she first received a Blood (Transfused) transfusion in Canada during the Class Period and at the time of delivery of the Late Claim application hereunder.

(2) Notwithstanding the provisions of Section 3.01 Tran(l)(a), if a claimant cannot comply with the provisions of Section 3.01 Tran(l)(a), the claimant must deliver to the Administrator corroborating evidence independent of the personal recollection of the claimant or any person who is a Family Member of the claimant establishing on a balance of probabilities that he or she received a Blood (Transfused) transfusion in Canada during the Class Period.

(3) Notwithstanding the provisions of Section 3.01 ran(l)(c), if a claimant cannot comply with the provisions of Section 3.01 Tran(l)(c) because the claimant used non-prescription intravenous drugs, then he or she must deliver to the Administrator other evidence establishing on a balance of probabilities that he or she was infected for the first time with HCV by a Blood (Transfused) transfusion in Canada during the Class Period.

…

3.03 Additional Proof

If requested by the Administrator, a person claiming to be a HCV Infected Person must also provide to the Administrator:

(a) all medical, clinical, hospital or other such records in his or her possession, control or power;

(b) a consent authorizing the release to the Administrator of such medical, clinical, hospital records or other health information as the Administrator may request;

(c) a consent to a Traceback Procedure (in the case of a Primarily-Infected Person or Secondarily-Infected Person only);

(d) a consent to an independent medical examination;

(e) income tax returns and other records and accounts pertaining to loss of income; and

(f) any other information, books, records, accounts or consents to examinations as may be requested by the Administrator to determine whether or not a claimant is a HCV Infected Person or to process the Late Claim.

If any person refuses to provide any of the above information, documentation or other matters in his or her possession, control or power, the Administrator must not approve the Late Claim.

…

3.05 Late Claim by HCV Personal Representative of HCV Infected Person

(l) A person claiming to be the HCV Personal Representative of a HCV Infected Person who has died and who is determined eligible to make a Late Claim pursuant to Appendix E of this HCV Late Claims Benefit Plan must deliver to the Administrator a Late Claim application form prescribed by the Administrator together with:

(a) proof that the death of the HCV Infected Person was caused by his or her infection with HCV; (b)

unless the required proof has already been previously delivered to the Administrator:

(i) if the deceased was a Primarily-Infected Hemophiliac or Primarily- Infected Person, the proof required by Section 3.01 Hemo or 3.01 Tran, and Section 3.03, as applicable; or

(ii) if the deceased was a Secondarily-Infected Person, the proof required by Sections 3.02 and 3.03; and

(c) the original certificate of appointment of estate trustee, grant of probate or of letters of administration or notarial will (or a copy thereof certified to be a true copy by a lawyer or notary) or such other proof of the right of the claimant to act for the estate of the deceased as may be required by the Administrator.

(2) A person claiming to be the HCV Personal Representative of a HCV Infected Person who is mentally incompetent and who is determined eligible to make a Late Claim pursuant to Appendix E of this Late Claim Plan must deliver to the Administrator a Late Claim application form prescribed by the Administrator together with:

(a) unless the required proof has already been previously delivered to the Administrator:

(i) if the HCV Infected Person is a Primarily- Infected Hemophiliac or Primarily-Infected Person, the proof required by Section 3.01Hemo or 3.01 Tran and Section 3.03, as applicable; or

(ii) if the HCV Infected Person is a Secondarily-Infected Person, the proof required by Sections 3.02 and 3.03; and

(b) the court order or power (or a copy thereof certified to be a true copy by a lawyer or notary) or such other proof of the right of the claimant to act for the HCV Infected Person as may be required by the Administrator.

(3)(Tran) Notwithstanding the provisions of Section 3.01 Tran(l)(b), if a deceased Primarily-Infected Person was not tested for the HCV antibody or HCV the HCV Personal Representative of such deceased Primarily-Infected Person may deliver, instead of the evidence referred to in Section 3.01 Tran(l)(b), evidence of any one of the following:

(a) a liver biopsy consistent with HCV in the absence of any other cause of chronic hepatitis;

(b) an episode of jaundice within three months of a Blood (Transfused) transfusion in the absence of any other cause; or

(c) a diagnosis of citThosis in the absence of any other cause.

For greater certainty, nothing in this Section will relieve any claimant from the requirement to prove that the death of the Primarily-Infected Person was caused by his or her infection with HCV.

(3)(Hemo) Notwithstanding the provisions of Section 3.01Hemo(l)(b), if a deceased Primarily-Infected Hemophiliac died before I January 1999 and was not tested for the HCV antibody or HCV, the HCV Personal Representative of such deceased Primarily- Infected Hemophiliac may deliver, instead of the evidence referred to in Section 3.01Hemo(I)(b), evidence of any one of the following:

(a) the Primarily-Infected Hemophiliac had tested positive for HIV prior to his or her death;

(b) a liver biopsy consistent with HCV in the absence of any other cause of chronic hepatitis;

(c) an episode of jaundice within three months of using or taking Blood (Hemophiliac) in the absence of any other cause; or

(d) a diagnosis of cirrhosis in the absence of any other cause.

For greater certainty, nothing in this Section will relieve any claimant from the requirement to prove that the death of the Primarily-Infected Hemophiliac was caused by his or her infection with HCV except as otherwise provided in Section 5.01(4).

(4) Notwithstanding the provisions of Section 3.02(1 if the HCV Personal Representative of a deceased Secondarily-Infected Person cannot comply with the provisions of Section 3.02(l)(b), the HCV Personal Representative must deliver to the Administrator other evidence establishing on a balance of probabilities that such deceased Secondarily-Infected Person was infected with HCV.

(5)(Tran) For the purposes of Sections 3.05 (1) and (2), the statutory declaration required by Sections 3.01Tran(l)(c) and 3.02(1)(a) must be made by a person who is or was sufficiently familiar with the HCV Infected Person to declare that to the best of his or her knowledge, information and belief the HCV Infected Person did not use non- prescription intravenous drugs and was not infected with Hepatitis Non-A Non-B or HCV prior to 1 January 1986. If such a statutory declaration cannot be provided because the HCV Infected Person used nonprescription intravenous drugs, the HCV Personal Representative must deliver to the Administrator other evidence establishing on a balance of probabilities that the Primarily-Infected Person was infected for the first time with HCV by a Blood (Transfused) transfusion in Canada during the Class Period or the Secondarily- Infected Person was infected for the first time with HCV by his or her Spouse who is or was a Primarily-Infected Person or Opted-Out Primarily-Infected Person or by his or her Parent who is or was a HCV Infected Person or an Opted-Out HCV Infected Person.

(5)(Hemo) For the purposes of Sections 3.05(1) and (2), the statutory declaration required by Sections 3.01Hemo(l)(c) and 3.02(I)(a) must be made by a person who is or was sufficiently familiar with the HCV Infected Person to declare that to the best of his or her knowledge, information and belief the HCV Infected Person did not use non- prescription intravenous drugs. If such a statutory declaration cannot be provided because the HCV Infected Person used non-prescription intravenous drugs, the HCV Personal Representative must deliver to the Administrator evidence establishing on a balance of probabilities that the Primarily-infected Hemophiliac was infected with HCV by Blood (Hemophiliac) or the Secondarily-Infected Person was infected for the first time with HCV by his or her Spouse who is or was a Primarily-infected Hemophiliac or Opted-Out Primarily-Infected Hemophiliac or by his or her Parent who is or was a HCV Infected Person or an Opted-Out HCV Infected Person.

(6) If requested by the Administrator, the HCV Personal Representative must also provide to the Administrator:

(a) all medical, clinical, hospital or other such records in his or her possession, control or power;

(b) a consent authorizing the release to the Administrator of such medical, clinical, hospital records or other health information as the Administrator may request;

(c) a consent to a Traceback Procedure (in the case of a Secondarily-Infected Person only); (d) a consent to an independent medical examination;

(e) income tax returns and other records and accounts pertaining to loss of income; and

(f) any other information, books, records, accounts or consents to examinations as may be requested by the Administrator to determine whether or not a person is a HCV Infected Person or to process the Late Claim.

If any HCV Personal Representative refuses to provide any of the above information, documentation or other matters in his or her possession, control or power, the Administrator must not approve the Late Claim.

3.06 Late Claim by Dependant

A person claiming to be a Dependant of a HCV Infected Person who has died and who is determined eligible to make a Late Claim pursuant to Appendix E of this HCV Late Claims Benefit Plan or a person claiming to be a Dependant of a deceased HCV Infected Person whose Late Claim is accepted by the Administrator under this HCV Late Claims Benefit Plan must deliver to the Administrator a Late Claim application form prescribed by the Administrator together with:

(a) proof as required by Sections 3.05(l)(a) and (b) (or, if applicable, Sections 3.05(3)(Tran) or 3.05(3)(Hemo) or 3.05(4)) and 3.05(5)(Tran) or 3.05(Hemo) and 3.05(6), unless the required proof has been previously delivered to the Administrator; and

(b) proof that the claimant was a Dependant of the HCV Infected Person.

ARTICLE SIX

COMPENSATION TO APPROVED LATE CLAIM DEPENDANTS AND APPROVED LATE CLAIM FAMILY MEMBERS

6.01 Compensation to Approved Late Claim Dependants

(l) If a HCV Infected Person dies and the death was caused by his or her infection with HCV, the Approved Late Claim Dependants of such HCV Infected Person will be entitled to be compensated for their loss of support. The loss of support is an amount each calendar year equal to the deceased HCV Infected Person's Annual Loss of Net Income for such year until he or she would have attained the age of 65 years determined in accordance with Section 4.02(2), provided, however, that the annual amount payable under this provision will be reduced by an amount equal to 30% of the net amount as calculated to allow for the personal living expenses of the HCV Infected Person, and provided further that, for purposes of calculating the annual amount payable under this provision, "Postclaim Net Income" will be computed without reference to clauses (A), (C) and (D) of the definition of "Post-claim Net Income" and that the words "the person" and "on account of illness or disability for the year" in clause (B) and the words "the person" in clause (E) of the definition of "Post-claim Net Income" were replaced with the words "the Dependants as a result of the death of the person"

(2) If a HCV Infected Person dies and the death was caused by his or her infection with HCV, the Approved Late Claim Dependants of such HCV Infected Person living with such HCV Infected Person at the time of his or her death will be entitled to be compensated for the loss of the services of the HCV Infected Person in the home at the rate ofS16.15 per hour to a maximum of $355.30 per week .

(3) The amounts payable pursuant to Section 6.01(1) or (2) will be allocated as the Approved Late Claim Dependants may agree or, failing any agreement, as the Administrator so determines based on the extent of support received by each of the Approved Late Claim Dependants prior to the death of the HCV Infected Person. Notwithstanding any of the provisions hereof, the Approved Late Claim Dependants of a HCV Infected Person whose death was caused by his or her infection with HCV cannot claim compensation for loss of support and compensation for the loss of services in the home for the same period.

6.03 Limitation

Approved Late Claim Dependants and other Approved Late Claim Family Members of a HCV Infected Person will only be entitled to make Late Claims pursuant to Sections 6.01 and 6.02 (or, in lieu thereof, under Section 5.01(2)) and they will not be entitled to make any other Late Claims or to any additional or other compensation. Nothing in this Section will affect the personal Late Claim of a Spouse or Child who is also a HCV Infected Person.

ARTICLE EIGHT

CHARACTER OF PAYMENTS

8.05 No Assignment

Any amount payable under this HCV Late Claims Benefit Plan cannot be assigned, without the written consent of the Administrator.