

## CHURCH & COMPANY

### NOTICE OF SETTLEMENT

*There has recently been a tentative settlement of the case subject to the approval of the Court. This Notice describes the terms of the proposed settlement and what will happen next.*

**THIS NOTICE MAY AFFECT YOUR LEGAL RIGHTS IN CONNECTION WITH  
THE REDUCTION OF YOUR LONG TERM DISABILITY BENEFITS**

**PLEASE READ CAREFULLY**

FILE REF: 33005/001

July 30, 2019

Dear Claimant:

**Re: Nina Watt and James Hensman v. Health Sciences Association  
of B.C., and others SCBC S134066 (Vancouver Registry)**

On July 24, 2015, a class action was certified by the British Columbia Supreme Court in the case of **Watt and Hensman v. Health Sciences Association of B.C., and others**, SCBC S134066 Vancouver Registry, (the "Class Action"). Since that time, the parties have been moving towards a trial of the case. The trial was scheduled to begin on September 16, 2019. It has been adjourned, pending the settlement approval process described below.

### **BACKGROUND**

The Class Action was certified on behalf of two subclasses consisting of:

1. Health Science Association of British Columbia ("HSA") members who started receiving long term disability benefits between March 1, 1989 and February 28, 1999 and who were still receiving such benefits as of June 1, 2012 (the "LTD Agreement #1 Subclass"); and

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2. HSA members who started receiving long term disability benefits between March 1, 1999 and August 3, 2006 and who were still receiving such benefits as of June 1, 2012 (the "LTD Agreement #2 Subclass").

We are writing to you at this time for one of three reasons:

- (a) you "opted in" to the Class Action by writing to Church & Company and telling us you wished to opt in;
- (b) you were deemed by the Class Proceedings Act not to have "opted out" of the Class Action, or
- (c) you were one of the people receiving benefits from the Trusts as of June 1, 2012, but do not fall with category (a) and (b) above, and the defendants have requested that you receive settlement payments.

***The Lawsuit***

The lawsuit alleges that there were contracts between HSA and its members and that HSA breached the terms of those contracts by reducing long-term disability benefits to disabled members. The lawsuit also alleges that the LTD Agreements constituted contracts of insurance under the BC Insurance Act and that HSA was precluded by legislation from taking steps to reduce benefits.

Further, the lawsuit alleges that the Trustees of the LTD Trusts owed a fiduciary duty to the class members and breached that duty or were negligent in carrying out their obligations.

The allegations in the action are denied by the HSA and the Trustees.

***Steps in the Lawsuit***

The lawsuit was originally commenced on May 31, 2013.

In December, 2013 and February, 2014 Affidavits from a number of individuals were filed, both in support of, and in opposition to, the lawsuit being certified as a class proceeding. In April, 2014, the representatives of the Defendants who filed affidavits were cross-examined on those affidavits by counsel for the Plaintiffs.

The certification application was heard between December 8-11, 2014. Supplemental submissions on the class definitions were provided to the Court in March and April, 2015. Reasons for Judgment, approving certification, were issued by the Court, on July 24, 2015.

In August, 2015, HSA and the Trustees appealed the decision certifying the case to the British Columbia Court of Appeal. The Defendants sought a stay of proceedings pending the hearing of their appeal. The BC Supreme Court rejected a complete stay, and granted a partial stay, pending appeal, in November, 2015.

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The British Columbia Court of Appeal issued Reasons on July 25, 2016. The Court of Appeal accepted a number of arguments made by the Defendants and substantially narrowed the claims available to the class.

A Notice to potential class members was approved by the Court on August 25, 2017. The Notice was sent out shortly thereafter.

The parties made extensive document disclosure with tens of thousands of pages of documents being exchanged by all parties.

In October, 2017, the parties argued an application brought by the Trustees that the Hewitt Action (a lawsuit commenced by the HSA and the Trustees against the Trusts' actuaries) should be heard at the same time as these proceedings. This application was dismissed.

Following document disclosure, representatives of all parties were examined for discovery over the course of seven days by the lawyers for the opposite parties.

The case was scheduled for a 20 day trial commencing September 16, 2019. The terms of a settlement were negotiated during June and July, 2019.

**THE PROPOSED SETTLEMENT**

A tentative settlement has been reached between the parties. In order for the settlement to become effective the terms will be put before the Court. The settlement terms must be approved by the Court either as set out, or not at all. While the Court can give the parties its views, the Court does not typically "change" the terms of the settlement. People who are covered by the settlement are entitled to have their comments (both positive and negative) put before the Court for its consideration. The settlement envisages payments over time. Some of the payments are contingent.

The terms of the settlement are as follows:

The payments below will be distributed amongst the 221 individuals who were beneficiaries of the Trusts as of June 1, 2012, not just those who opted in / or were deemed to have opted in, to the class. The manner of distribution of the funds will be determined by the Trustees of Trusts 1, 2 and 3 and their current actuary and legal counsel, in consultation with Plaintiffs' counsel (the "**Settlement Formula**").

1. An up-front payment of \$2,000,000, of which the HSA will contribute \$1.25 million and the Trusts will contribute \$750,000. This amount will be payable by the Defendants within 30 days' of the Court approval of both the settlement and the Trustees' Section 86 Petition (as defined below).
2. Payment of the entire settlement proceeds, or judgment proceeds, of the "Hewitt Action" (BCSC Action No.S120334, Vancouver Registry), including any appeal therefrom, within 30 days of receipt, in accordance with the Settlement Formula. ***The Hewitt Action is a***

***claim by the HSA and the Trustees for negligence against the former actuaries of the Trusts. It is currently scheduled for a trial in September, 2020.***

3. The Trusts will fund the prosecution of the Hewitt Action and the Trustees will continue to pursue the Hewitt Action as they are obliged to do in their fiduciary role. The Trusts will also provide the Court with a copy of the expert report served by the Plaintiffs in the Hewitt Action as part of the formal settlement documentation before the Court, which expert report shows a claim figure of \$7,238,000 which, when prejudgment interest is added, comes to a total of at least \$8,668,234.43.
4. The Trusts will make payment in accordance with the Settlement Formula of any net surplus remaining in the Trusts once the final payment to all existing beneficiaries is made.
5. It is anticipated that those beneficiaries of the Trusts currently receiving disability payments from the Trusts will be treated in the same manner as other beneficiaries of the Trusts following the 2012 reductions and will continue to receive benefits as they are currently and will be treated in the same manner for Municipal Pension Plan purposes. However, the Trustees cannot guarantee that future events will not affect their ability to maintain benefits at current levels. The Trustees will make all reasonable efforts to ensure that this will happen and they are not currently aware of any concerns that may have a negative effect on benefits. The Trustees cannot fetter their discretion to seek amendments to the terms of the Plans, if necessary. This applies to the beneficiaries' rights under the Municipal Pension Plan, to the extent that the Trustees require, as part of their administration of the Trusts, that they be exercised by the beneficiaries. The Trustees do not have the ability to change the eligibility criteria, or to prevent changes to the eligibility criteria, for benefits under the Municipal Pension Plan.
6. Concurrently with the application for approval of the settlement, the Trustees will bring a Petition before the Class Proceedings Judge for advice and directions under either or both of section 86 of the Trustee Act and the inherent jurisdiction of the Court (the "**Section 86 Petition**") to permit the Trustees to enter into the settlement of the Class Action. If approval is granted, then the Trustees will amend the Trust Deeds to provide that any surplus remaining in the trust funds on termination of the Trusts will be distributed to the beneficiaries of the settlement. This amendment will not be changed by the Trustees.
7. On the hearing of the Section 86 Petition and at the settlement approval hearing, the Trustees may ask the Court for an order denying Church & Company any fees from the funds that are payable under this settlement from the Trusts or the Hewitt Action. Church & Company and the class plaintiffs will be entitled to take a contrary position. Whatever the outcome of the Court's decision on this issue, it shall not preclude a settlement, provided that the Trustees are granted the ability to enter into the settlement.
8. The Court will be asked to permit the representative plaintiffs to receive an honorarium, as approved by the Court, of up to \$5,000 each, to come off the top of any settlement funds. The Defendants have said that they will take no position on this application.
9. The parties will ask the Court to order that the net amount payable under item 1 above be paid in respect of the plaintiffs' "non-pecuniary" claims and that further monies received by the payees be ordered to be paid in connection with the loss of benefits. The Defendants

will not be responsible for any tax consequence that the payees may incur as a result of receiving these contemplated distributions from the Trust Funds, nor for any attendant consequences on the Plaintiffs' entitlement to CPP benefits and/or entitlement to the Municipal Pension Plan.

The application for Court approval of the settlement and the Section 86 Petition is expected to be heard by the Court on Monday, September 30, 2019 and Tuesday, October 1, 2019.

### **CHURCH & COMPANY'S FEES**

Church & Company originally entered into a contingency fee agreement with the class in 2013 to pursue the litigation on a contingency fee basis. In broad terms, this means that Church & Company only gets paid out of monies recovered by the Class. The contingency fee is 33 $\frac{1}{3}$ %. During the course of the litigation, Church & Company has not otherwise received payment for its legal services. In addition, Church & Company has paid certain "disbursements" (i.e. out of pocket costs) on behalf of the class and has not been reimbursed for the same.

Church & Company intend to ask the Court to award it the full 33 $\frac{1}{3}$ %. However, the Court has the final say on the amount payable to Church & Company.

### **WHEN WILL I GET PAID AND HOW MUCH?**

The amount that you will receive, if the settlement is approved by the Court, will depend on your specific circumstances in relation to others' circumstances. The "formula" which will be calculated will consider various factors such as

- (a) the amount of benefits that you were receiving as of June, 2012;
- (b) the amount of the reduction in your benefits; and
- (c) any payment that you received in connection with your transfer to the MPP.

The timing for the payments will be made as follows:

- (a) an initial payment within approximately 90 days of the Court's approval of the settlement;
- (b) a second payment, assuming that there is a recovery under the Hewitt Lawsuit, within approximately 90 days of a final resolution in that case; and
- (c) a third payment, assuming that there is a surplus left over in the Trusts, within approximately 90 days' of the final beneficiary ceasing to be a member of the Trusts.

**QUESTIONS / COMMENTS**

If you have questions / comments about the settlement, you can write to us at:

- (a) [info@churchlegal.com](mailto:info@churchlegal.com); or
- (b) Church & Company, 900 -1040 West Georgia Street, Vancouver, BC V6E 4H1

We will NOT be able to advise you of the specific amount that you are expected to receive under the settlement agreement, assuming that it is approved, until the calculation has been finalized and the Hewitt Lawsuit has been concluded.

This Notice has been approved by the British Columbia Supreme Court.

Yours truly,

**CHURCH & COMPANY**

By:

David P. Church, Q.C.