

THE 1986-1990 HEPATITIS C CLASS ACTION SETTLEMENT

IN THE MATTER OF AN APPEAL FROM THE DECISION OF THE ADMINISTRATOR
DATED APRIL 4, 2005, CLAIM #4155

DATE OF HEARING: December 19, 2005

ARBITRATOR Michael Mitchell

IN ATTENDANCE: Claimants
Belinda Bain, for the Administration
Carol Miller, for the Administration

DECISION

1. This is an Ontario-based Claimant, claim # 4155.
2. This claim is being pursued by the personal representatives of the HCV primarily infected person's estate.
3. The deceased passed away on February 21, 1996. The deceased received units of blood prior to her death. The donor of those units of blood subsequently tested positive for the HCV anti-body. The issue in the case is whether the infection with hepatitis C materially contributed to the death.
4. It appears to me that there has been considerable confusion on the part of the personal representatives with respect to this proceeding. Originally the Claimants retained counsel on the matter, but in the end result proceeded without counsel.
5. After hearing dates were originally set, the personal representatives indicated that they no longer wished to continue with the appeal. However, the Claimants then provided written advice on November 6, 2005, that they wished to cancel the hearing but leave open their options to appeal. Accordingly, in light of this uncertainty, the hearing proceeded on December 19, 2005.
6. At the hearing, the Claimants indicated that they did not have any evidence that the disease materially contributed in any way to the passing of the deceased. Accordingly, it was the Arbitrator's understanding at the hearing that the Claimants understood that they were not in a position to proceed with their claim in the absence of evidence and the claim would be dismissed. In fact, at the hearing in this matter, it was indicated that the claim would be dismissed.
7. Subsequent to the hearing, the Claimants telephoned on numerous occasions to the Arbitrator's office, indicating among other things, that they expected a possibility of a positive result in the matter. This indicates to me that there was no real understanding by the Claimants of the legal position they had been taking.
8. Accordingly, in light of all of the confusion in the Claimants' minds, I will leave it open for one month from the date hereof for the Claimants to indicate, **clearly in writing**, that they do have evidence to proceed with the claim, or that they do not have evidence to proceed with the claim.
9. If there is no evidence that the Claimants have to call, the claim will be dismissed. If I do not receive such material in writing within the month, the claim will be dismissed.
10. The claimants should not contact the Referee for advice in this matter. They should either retain counsel if they choose, or speak with counsel for the Administrator to clarify the Administrator's understanding of the situation

DATED at Toronto this 16th day of October, 2006

