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

BETWEEN:

Claimant File 1000029

- and -

The Administrator

(On a motion to oppose confirmation of the decision of Tanja Wacyk released May 16, 2004)

Reasons for Decision

WINKLER R.S.J.:

Nature of the Motion

1. This is a motion to oppose confirmation of the decision of a referee appointed pursuant to the terms of the Settlement Agreement in the Hepatitis C litigation for the class period January 1, 1986 to July 1, 1990. The Claimant made a claim for compensation pursuant to the Agreement which was denied by the Administrator charged with overseeing the distribution of the settlement monies. The Claimant appealed the denial to a referee in accordance with the process set out in the Agreement. The referee upheld the decision of the Administrator and denied the appeal. The Claimant now opposes confirmation of the referee's decision by this court.

Background

2. The Settlement Agreement is Pan-Canadian in scope and was approved by this court and also approved by courts in British Columbia and Quebec. (See *Parsons v. The Canadian Red Cross Society* (1999), 40 C.P.C. (4th) 151 (Ont. Sup. Ct.)). Under the Agreement, persons infected with Hepatitis C through a blood or specified blood product transfusion, within the period from January 1, 1986 to July 1, 1990, are entitled to varying degrees of compensation depending primarily on the progression of the Hepatitis C infection.

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Facts

3. The Claimant has been diagnosed with the Hepatitis C virus. The Claimant seeks compensation pursuant to the Transfused HCV Plan as a *primarily infected person*.

4. Although the Claimant claims to have received blood in Canada prior to the Class Period, he makes no attempt to argue that he received blood during the Class Period.

5. The Administrator denied the Claim on the basis that the Claimant did not receive a blood transfusion during the Class Period. On May 16, 2004, a referee upheld the Administrator's decision.

Standard of Review

6. In a prior decision in this class proceeding, 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.) was adopted as the appropriate standard to be applied on motions by a rejected claimant to oppose confirmation of a referee's decision. In *Jordan*, Anderson J. stated 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."

Analysis

7. In submissions provided for the purpose of this motion, the Claimant wrote,

I don't understand how I could be excluded from this settlement when I am suffering and will ultimately die the same way as those who fit into the 86-90 Class Period.

8. Since the claimant did not receive blood during the class period, the referee was obligated to uphold the Administrator's decision.

9. The Claimant is essentially asking this court to either amend the Settlement Agreement or to disregard the clear wording of this agreement. However, the court, as was the referee, is unable to grant relief of that nature.

Result

10. In my view, the referee committed no errors in principle, with respect to jurisdiction or by misapprehending the evidence. Accordingly, the referee's decision is

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confirmed.



Winkler R.S.J.

Released: September 21, 2005