# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: ***HCV Settlement Agreement Claim #12808,***
2006 BCSC 465

Date: 20060323
Docket: C965349
Registry: Vancouver

**In the Matter of the HCV 1986-1990**
**Transfused Settlement Agreement**
**Re Claim No. 12808**

Before: The Honourable Mr. Justice Pitfield

## Reasons for Judgment

| | |
|---|---|
| Counsel for the Claimant: | Self-Represented |
| Counsel for the British Columbia Fund: | William A. Ferguson |
| Written Submissions Received from Fund Counsel: | December 22, 2005 |
| Written Submissions received from Claimant: | None |
| Place of Hearing: | Vancouver, B.C. |

[1] Claimant 12808 applies by notice of motion to oppose confirmation of a Referee's decision made November 2, 2005. The decision affirmed the Administrator's determination that the Claimant was not entitled to compensation under the Hepatitis C Transfused Plan comprising part of the 1986-1990 Hepatitis C Settlement Agreement. The Referee affirmed the Administrator's decision on the basis that there was no evidence that the Claimant had been transfused with blood as defined by the Transfused HCV Plan in the class period extending from January 1, 1986 through July 1, 1990.

[2] The Referee concluded that all of the evidence pointed to the fact the Claimant had received Rh Immune Globulin, a blood product which is excluded from the definition of blood contained in Article 1.01 of the Transfused HCV Plan. The evidence before the Referee indicated that the Claimant received Rh Immune Globulin in the class period. The Claimant's belief is that she received a blood transfusion in either 1989 or 1990.

[3] The Claimant reported the fact that she had received a blood transfusion to her physician who in turn completed relevant documentation in relation to her claim. In response to inquiries from the Administrator, the Claimant's doctor advised that he had no personal knowledge of the circumstances surrounding the Claimant's receipt of blood or blood products, and he had been writing on the basis of information provided to him by the Claimant.

[4] The traceback procedure which was initiated in relation to the claim indicated that units of blood had been requested for transfusion but the units had not been

used. The records indicate that two of the three units of blood which had been provided for transfusion to the Claimant if necessary, were in fact used on another patient. The third was destroyed as it was not used on any patient during its shelf life.

[5] One can understand and sympathize with the Claimant's frustration. It is understandable that the Claimant would think that receipt of any blood-related product comprised a blood transfusion. It is also likely that the Claimant was infected with Hepatitis C by the blood product she received. At the same time, the Administrator, Referee and this Court must respect the terms of the Settlement Agreement and the Transfused HCV Plan which were concluded on behalf of the class. It is not open to the Court to amend it or to afford it any meaning other than that which is clear on its face. The Settlement Agreement only provides relief to those infected by the transfusion of whole blood rather than a blood product, one of which is Rh Immune Globulin.

[6] The difficulty and dilemma faced by this Claimant are the same as those faced by the Claimant whose application to oppose confirmation of a Referee's decision was heard and decided by Winkler J. of the Ontario Court of Justice. In reasons released February 11, 2003, the learned judge said the following, and I quote:

> 7. The Claimant has applied for compensation under the terms of the Hepatitis C 1986-1990 Class Action Settlement, as approved by Court Order dated October 22, 1999. The terms of the settlement provide a detailed outline of who is eligible for compensation, and how eligibility can be proven.

8. In order to qualify for compensation as an eligible class member, there are a number of factual elements that must be established. In this case, to be accepted as a primarily infected person under the HCV Transfused Plan, the Claimant must first demonstrate that she received blood in the Class Period. Membership in the class is a precondition of eligibility for compensation.

9. For the purposes of determining class membership, "Blood" is specifically defined under the terms of the Settlement Agreement as follows:

> "Blood" means whole blood and the following blood products: packed red cells, platelets, plasma (fresh frozen and banked) and white blood cells. Blood does NOT include:
>
> > Albumin 5%, Albumin 25%, Factor VIII, Porcine Factor VII, Factor IX, Factor VII, Cytomegalovirus Immune Globulin, Hepatitis B Immune Globulin, Rh 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).

[7] In the circumstances, I have no alternative but to dismiss the Claimant's application to oppose confirmation of the Referee's decision.

"Mr. Justice Pitfield"