

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: ***HCV Settlement Agreement Claim #12821,***
2006 BCSC 1528

Date:20061017
Docket: C965349
Registry: Vancouver

**In the Matter of the HCV 1986-1990
Transfused Settlement Agreement
Re Claim No. 12821**

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:	August 25, 2006 and September 7, 2006
Written Submissions Received from Claimant:	September 6, 2006
Place of Hearing:	Vancouver, B.C.

[1] Claimant 12821 opposes confirmation of a Referee's decision confirming the Administrator's rejection of the Claimant's application for coverage under the 1986-1990 Transfused HCV Settlement Agreement. The claim was rejected because the Claimant could not show, on the balance of probabilities, that he had been infected with the HCV antibody by a blood transfusion received in the Class period.

[2] Briefly stated, the facts are these. The Claimant suffered a work-related injury in December 1996. He was admitted to hospital and underwent surgery to re-attach a partially amputated thumb. While the hospital had culled records of his treatment, copies were obtained from the Workers' Compensation Board. None of the hospital or other medical records refers to a blood transfusion.

[3] A traceback was conducted in accordance with the court approved protocol. None of the records of blood use at the hospital on the day on which the Claimant believed he had been transfused indicates that the Claimant was transfused with any blood or blood products.

[4] The Claimant received an injection of a drug called "Papaverine", described in one of the medical reports as a product designed to absorb blood from internal bleeding following the surgery.

[5] In the course of the hearing before the Referee, the Claimant submitted that Papaverine was combined with blood serum at the time of manufacture or at the time of injection. He claimed that the blood serum must have been infected, thereby causing him to be infected with the HCV antibody.

[6] The Referee's decision notes that the Claimant initially submitted that Papaverine was a form of blood serum or plasma, but he later conceded that was an untenable position. In his application to oppose confirmation of the Referee's decision, the Claimant renews his claim that Papaverine must have been administered in conjunction with an infected blood product with the result that he is entitled to coverage under the Transfused HCV Plan. The Claimant might have relied on medical evidence to confirm his understanding that Papaverine was prepared or injected in conjunction with a blood product were such evidence available, but he did not to do so.

[7] I have carefully reviewed all of the material before the Administrator and Referee, including all records obtained from Canadian Blood Services and the Workers' Compensation Board, and emails passing between Fund Counsel and the Claimant. I am compelled to conclude that there is no error in the Referee's decision and it must be confirmed.

[8] I share the views expressed by the Referee in paragraph 7 of his reasons as follows:

I acknowledge the personal feelings and frustrations of the Claimant in having his claim rejected. While that is a result that is unsatisfactory for him, neither the Administrator nor a Referee appointed under the Plan has the authority or discretion to award his claim. I also acknowledge that he may not be able to determine with any precision the cause of his Hepatitis C infection. Studies indicate this is the case in up to 20% of all cases of Hepatitis C.

[9] The application to oppose confirmation of the Referee's decision is dismissed.

"Mr. Justice Pitfield"