

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *HCV Settlement Agreement Claim No.*
1300773,
2003 BCSC 1545

Date: 20031009
Docket: C965349
Registry: Vancouver

**IN THE MATTER OF THE HCV 1986-1990
TRANSFUSED SETTLEMENT AGREEMENT
RE: CLAIM NO. 1300773**

Before: The Honourable Mr. Justice Pitfield

Reasons for Judgment

Counsel for the Claimant:	Self-Represented
Counsel for the British Columbia Fund	William A. Ferguson
Submissions Received from Fund Counsel:	July 3, 2002
Submissions Received from Claimant:	None Vancouver, B.C.

[1] The Claimant opposes confirmation of a Referee's decision upholding the Administrator's ruling that the Claimant does not qualify for compensation under the 1986-1990 Hepatitis C Settlement Agreement.

[2] On April 22, 1997, a virology report confirmed the Claimant was infected with the Hepatitis C virus. The Claimant applied for compensation as a primarily-infected person under the Settlement Agreement designed to benefit individuals infected with Hepatitis C by a transfusion of blood in Canada between January 1, 1986, and July 1, 1990 (the "Class Period").

[3] The record indicates that the Claimant received four units of red blood cells by transfusion on October 31, 1989, and November 1, 1989, in British Columbia. The Administrator requested a "traceback" pursuant to Article 3.04(1) of the Settlement Agreement in order to determine whether the blood received by the Claimant was the source of the Claimant's infection. On February 20, 2002, Canadian Blood Services advised the Administrator the traceback results were negative by which was meant the Hepatitis C antibody was not present in any of the blood or blood products received by the Claimant during the Class Period.

[4] On March 6, 2002, the Administrator advised the Claimant her claim would be rejected unless she provided further evidence that she was infected for the first time with the Hepatitis C antibody by a blood transfusion received during the Class Period. The Claimant did not provide any further evidence.

[5] On November 18, 2002, the Administrator advised the Claimant her application for compensation had been rejected. The Claimant requested a review of the Administrator's

decision by an Arbitrator whose decision would not be subject to appeal. In fact, the Claimant's case was reviewed by a Referee, a process to which the Claimant did not object.

A Referee's decision may be appealed to this Court.

[6] The Referee conducted an oral hearing in Yellowknife attended by the Claimant, who was self-represented, and Fund Counsel. On May 16, 2003, the Referee upheld the Administrator's decision.

[7] In her application, the Claimant stated the basis for opposing confirmation as follows:

Certain medical records that are critical to my case have been withheld [sic] by certain doctor(s) or lawyer(s).

Despite invitations to do so, the Claimant has provided no other information in the course of the appeal process.

[8] I discussed the review and appeal requirements in relation to the 1986-90 Settlement Agreement in *Re Claim No. 1300593*, [2003] B.C.J. No. 1088 (QL), 2003 BCSC 739. At paras. 15-16, I set out a non-exhaustive list of the kinds of evidence a Claimant would need to adduce in order to refute a negative traceback result:

[15] ...[A]t the least, complete family and personal medical history and detailed evidence of all aspects of the claimant's lifestyle including evidence of the absence of opportunity to be infected by needles or injections, however and for whatever purpose received. ...

[16] A simple denial by a Claimant of personal history or actions that have been identified as potential non-transfusion sources of HCV infection will not suffice. The reliability of the assertion which is subjective in nature would have to be tested by reference to all known objective evidence. One of the pieces of objective evidence is the negative traceback result following upon the application of, and adherence to, the approved traceback protocol. *Contradictory objective evidence*

would have to be very persuasive if the traceback result is the be refuted. [emphasis added]

[9] In sum, there must be some persuasive evidence provided by the Claimant to establish on the balance of probabilities that the source of the infection was from the blood products received during the Class Period.

[10] In written reasons, the Referee stated the following at paras. 12-13 in relation to the Claimant's personal and medical history:

12. I asked her to relate her prior medical history from birth, and noted:

She had been married from 1972 to 1979, had a common-law relationship as well as at least one other liaison for an indeterminate period but did not think she could have acquired the disease during the life of those relationships;

She had delivered three babies all by caesarean section in the years 1973, 1974 and 1979 but there had been no complications during those deliveries to the best of her memory;

She had been incarcerated for six months in British Columbia for a conviction for an accidental fatal shooting but could not remember the dates of the incarceration;

She acknowledged that the hospital records in question likely had not been transmitted to Dr. Mahboub after her relocation to Yellowknife;

She was unable to account for some five years of her life history.

13. I noted from the hospital records, including nurses notes, that:

She was diagnosed in November 1989 with severe hematenesis very likely secondary to alcoholic gastritis, pelvic ulcer disease and severe alcoholic liver disease;

She was slightly jaundiced in general;

She was living in the same house with someone who had Hepatitis due to IV drug use but denied using drugs;

Her drinking habit consisted of twelve beer a day;

On discharge hospital staff instructed the patient not to drink alcohol anymore.

[11] In the context of the Claimant's personal and medical history, and in the absence of evidence to support a contrary conclusion, the Referee was correct in affirming the Administrator's decision and dismissing the Claimant's appeal.

[12] The Claimant has provided no additional evidence in the course of the present application which, had it been before the Referee, might have resulted in a different conclusion and the application to oppose confirmation of the Referee's decision must be dismissed.

"Mr. Justice Pitfield"