

**IN THE MATTER OF A REFERENCE TO REVIEW**  
**THE DECISION OF THE ADMINISTRATOR UNDER THE HCV 1986-1990**  
**TRANSFUSED SETTLEMENT AGREEMENT**

Claim No.13953

Before: Vincent R.K. Orchard, Q.C., Referee

Hearing Date: January 25, 2006 at Vancouver, British Columbia

## Decision

### Claim ID: 13953

1. The Claimant applied for compensation as a Primarily-Infected Person under the Transfused HCV Plan ("Plan") established by the 1986-1990 Hepatitis C Settlement Agreement ("Settlement Agreement"). By letter dated October 29, 2004 the Administrator denied his Claim on the basis that the Claimant did not receive transfused Blood within the Class Period.

2. The Claimant requested that the Administrator's denial of his Claim be reviewed by a Referee.

3. An in-person hearing was conducted on January 25, 2006 in Vancouver, British Columbia. The Claimant testified. Throughout the conduct of this appeal and at the hearing the Administrator was represented by Mr. John Callaghan, Ontario Fund Counsel. Ms. Carol Miller of the Administrator's Office also attended the hearing and gave evidence.

4. The threshold issue in this reference is whether the Administrator was correct in denying the Claim on the basis that the Claimant had not provided sufficient evidence to show that he had received Blood within the Class Period from a donor determined to be HCV antibody positive.

5. There is no dispute that the Claimant has HCV. He claims that he has received two Blood transfusions during his lifetime, once prior to 1986 at the time of his birth and once in the Class Period during an admission to the Winnipeg Health Science Centre ("HSC") following a motor vehicle accident on October 30, 1986 in which he sustained injuries including a fractured pelvis and a closed head injury.

6. The Claimant has no recollection of surgery during his admission to the HSC in 1986. He states he recalls a doctor telling him that he had lost a lot of blood as a result of the injuries he sustained in the motor vehicle accident. He believes he had surgery for his pelvic fractures despite his lack of specific memory. However, he admits he has no surgical scars. He recalls he was hooked up to an IV unit in the ward at the hospital and he believes he was administered blood from the IV unit which he described as holding a long IV bag with clear fluid. He knows units of Blood were reserved for him

at the hospital and he believes some or all must have been administered to him during his admission. He wonders where all the blood could have gone.

7. Ms. Miller reviewed the hospital records during her testimony at the in-person hearing. The Claim file also contained medical records of the Claimant but for the sake of thoroughness all relevant medical records pertaining to the Claimant during the Class Period were obtained. In the pre-hearing phase of this reference I caused a Summons to be issued to the HSC for the Claimant's complete medical records during the Class Period including all Blood Bank records. The records were produced by the HSC and the records were duly circulated.

8. It is common ground that the HSC records from October 30 to November 19, 1986 contain the relevant records for the purposes of this Claim. The Claimant has identified this admission as the time in which he says he was given a Blood transfusion during the Class Period. The records disclosed pursuant to the Summons included records pertaining to a surgical procedure, specifically finger surgery, at the HSC on September 29, 1987. Apparently the finger surgery was the result of a work-related injury. The records for the September 1987 admission disclose no Blood transfusions nor does the Claimant suggest he had a blood transfusion at that time.

9. A careful and thorough review of the HSC records for the Claimant's admission to the HSC in October/November 1986 reveals no evidence of a Blood transfusion. The records show the following: The Claimant was admitted to the emergency department of the HSC late in the evening of October 30, 1986 after apparently been struck as a pedestrian by a van. It was a hit and run accident. He was admitted to the hospital formally at 1:54 a.m. on October 31, 1986. He was discharged November 19, 1986. There is no record of any operation. The Claimant was seen by physicians including an orthopaedic surgeon, an orthopaedic resident and a neurosurgeon. His final diagnoses were unstable lateral compression fractures of the superior and inferior pubic rami and a concussion.

10. The hospital Case Summary for the Claimant's admission was prepared by Dr. H. Fong. The Claimant's course in hospital is described as relatively uneventful. As noted, he was seen by an orthopaedic surgeon, Dr. Maccoomb, and also by a neurosurgeon, Dr. Sutherland. The physicians prescribed bed rest and observation for

the Claimant during his hospital admission. Doctors' orders included a Blood count, EKG and a Group and Match for six units of Blood. I refer specifically to page 10 of the paginated hospital records (page 59 of the Claim file). That document also confirms transfer to Ward A5 at 2:30 a.m., October 31, 1986 for observation. A nurse's triage note at page 11 of the paginated records (page 60 of the Claim file) describes minimal bleeding and that the Claimant was responsive only to painful stimuli. He had a decreased level of consciousness. The Claimant was sent for a CT scan of his brain shortly after admission and the report indicated a normal study (page 15 of the paginated records). The Claimant had initial x-rays of his pelvis and a repeat x-ray on December 3, 1986 post discharge. The x-ray report of December 3, 1986 (page 16 of the paginated records) indicates multiple pelvic fractures but there is no indication of any surgical hardware which would be typical of open reduction and internal fixation type surgery.

11. Ms. Miller gave evidence at the hearing concerning the rigorous procedures followed by hospital staff whenever Blood products are ordered. She specifically reviewed a number of documents in the hospital records and the Claim file related to the Group and Match noted under the physician's orders. Ms. Miller had in her past, as an experienced hospital nurse, worked at the Victoria Hospital in Winnipeg, where she became familiar with the forms and procedure for the handling of Blood products in Winnipeg. During the relevant time frame, the main Blood Bank in Winnipeg was at the Red Cross. The Red Cross did the cross-matching. At page 17 of the paginated records (a better copy is at page 64 of the Claim file) there is a Canadian Red Cross Blood Transfusion form for the Claimant which confirms a request for six units of packed red cells for cross-matching. Two nurses signed the form. Essentially a sample of the Claimant's Blood was taken from him at 22:50 hours on October 30, 1986 and sent to the Blood Bank for screening and cross-matching so that six units of red cells would be on hand for the Claimant if required. Page 18 of the paginated hospital records (page 65 of the Claim file) is a Canadian Red Cross Blood Transfusion form which lists the cross-matched six units of O+ Blood which had been obtained and transferred to the requesting hospital, the HSC, after the Red Cross Blood Bank did the cross-matching.

12. Ms. Miller also reviewed an orthopaedic consult report dated October 31, 1986 and completed by the orthopaedic resident and signed by the consulting

orthopaedic surgeon, Dr. Maccomb. The consult report confirms the orthopaedic diagnosis of unstable lateral compression fractures of the pelvis and also confirmed the medical plan for bed rest. Page 22 of the paginated medical records indicates that the Claimant came back to HSC as an out-patient; his ambulation was improving and on December 3, 1986 he obtained crutches.

13. Page 23 of the paginated hospital records is a "consent to treatment on admission" form that was completed by the Claimant for his admission to the HSC in October/November 1986. If the Claimant had surgery he would have signed a different form a "consent to surgical procedure" form which he did sign for his hand surgery in September 1987 (page 24 of the paginated hospital records). Ms. Miller explained that if the Claimant had surgery after his motor vehicle accident he would have signed, or the appropriate individuals, would have signed a "consent to surgical procedure" form.

14. In this Claim, Canadian Blood Services ("CBS") conducted a Traceback as part of the Litigation Notification Program. The results of the Traceback indicated no records of transfusions between the date of the Claimant's birth in 1963 to and including 1987 when he had his hand surgery. At page 69 of the Claim file there is a form described as a hospital record confirmation form. The top half of the form is completed by CBS; the bottom half is completed by the responding hospital. On March 31, 2004 a senior technologist at the HSC certified that the Blood Bank records and health records for the Claimant were searched and that during the Class Period admission in 1986 there is no record of transfusion but only that the patient was typed/screened/cross-matched. Page 70 of the Claim file is a Traceback document of CBS - Winnipeg Centre which confirms that the six units of red cells cross-matched for the Claimant and sent to the HSC Blood Bank by the Red Cross were, in fact, returned to the Red Cross on November 8, 1996. Page 70 is a conclusive document that none of the six units of Blood were transfused to the Claimant during his admission to the HSC following his motor vehicle accident but all were returned unused to the main Blood Bank in Winnipeg.

15. If there had been a Blood transfusion there is quite an elaborate process to record the continuity of the units of Blood and the transfusion. Ms. Miller gave evidence about that procedure. There is absolutely no record of a Blood transfusion in the relevant hospital records.

16. I find on the evidence before me that the Claimant never had a Blood transfusion during the Class Period. The records are quite clear that he was admitted for treatment of his motor vehicle accident injuries to the HSC, received conservative treatment and was discharged on November 19, 1986. He returned as an outpatient in relation to his pelvic fractures on at least two occasions. It is clear from the records that the Claimant never had surgery despite his belief that he did. Blood was obtained from the Blood Bank in case the Claimant was transfused but there was no need for transfusion and accordingly the cross-matched units of Blood were returned to the Blood Bank.

17. In conclusion, the Claimant has not met the onus of proof upon him to show his eligibility for compensation under the Plan. I uphold the Administrator's decision to deny the Claim.

DATED at Vancouver, British Columbia, this 3<sup>rd</sup> day of February, 2006.

A handwritten signature in black ink, appearing to read 'Vincent R.K. Orchard', written in a cursive style.

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Vincent R.K. Orchard, Q.C., Referee