

**IN THE MATTER 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 17577

- and -

The Administrator

**(On a motion to oppose confirmation of the decision of Judith Killoran released on
April 9, 2008)**

Reasons for Decision

WINKLER 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.

Facts

3. The Claimant seeks compensation as a Primarily Infected Person pursuant to the Transfused HCV Plan. At issue is whether the Claimant received a blood transfusion during the Class Period.

4. The Claimant asserts that he may have received a blood transfusion in June 1987 when he underwent a hemilaminotomy and discectomy. According to the Claimant, the doctor informed him that “he had to give me some blood due to the length of the surgery and the amount of blood lost from the procedure”.

5. The Claimant’s hospital records indicate that the Claimant lost some blood during the surgery but provide no indication that the Claimant was given a blood transfusion.

6. The Claimant’s claim was denied by the Administrator in a letter dated July 18, 2007 on the basis that he failed to provide sufficient evidence that he received blood during the Class Period. The Administrator’s decision was upheld by the referee.

7. In written submissions made in support of this motion, the Claimant indicated,

I FEEL THAT BEING IN CONTACT WITH ANY CONTAMINATED PRODUCT (BLOOD) OR EQUIPMENT WOULD RESULT IN BEING INFECTED (HEP. C.). I WOULD HAVE PROBABLY BEEN HOOKED UP AND READY FOR BLOOD IF NEEDED. THIS IS I FEEL ALL THAT IS NEEDED TO BE INFECTED WITH THE HEP C. I DON’T BELIEVE YOU HAVE TO BE PUMPED WITH A HOLE BAG OF BAD BLOOD FOR THE DAMAGE TO BE DONE. (sic)

Standard of Review

8. 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

9. In order to qualify for compensation pursuant to the Transfused HCV Plan, it is necessary to meet the requirements set out in the Settlement Agreement. In particular, section 3.01 of the Transfused HCV Plan specifically requires proof that the Claimant received a blood transfusion in Canada during the Class Period.

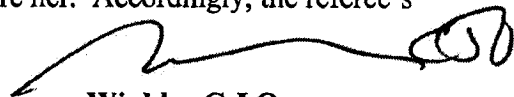
10. The Claimant’s personal recollection that he may have received blood during the Class Period is not sufficient to meet the requirements set out in section 3.01, since section 3.01(2) specifically excludes evidence based on “the personal recollections of the claimant.”

11. The claimant is correct that he does not need to establish that he was given a whole bag of blood in order to qualify for compensation. Any amount of blood by way of transfusion is sufficient. Nonetheless, here the claimant cannot establish on the balance of probabilities that he received blood during the class period. Other than his own recollection, the only other evidence that supports the Claimant's theory that he received a blood transfusion in June 1987 is a medical record that indicates that the Claimant lost blood during the procedure. While undoubtedly one factor to be considered in determining whether a transfusion was made, this record is insufficient, on its own, to establish on the balance of probabilities that the Claimant received a blood transfusion.

12. For the above-mentioned reasons, this claim cannot succeed, and the referee's decision must be upheld.

Result

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



Winkler C.J.O.

Oct 8, 2009
Released: