

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

Claim No: 19558

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

Decision

Claim ID: 19558

1. This is an appeal by way of a reference of the Administrator's decision by letter dated December 23, 2010 denying the claim for failure to provide evidence of a blood transfusion during the Class Period between January 1, 1986 and July 1, 1990. The Administrator's decision is based on Article 3.01(1)(a) of the Transfused HCV Plan (the "Plan") pursuant to the HCV 1986-1990 Transfused Settlement Agreement (the "Settlement Agreement") requiring the Claimant to submit evidence by way of medical records of a blood transfusion during the Class Period. The Claimant did not provide the necessary evidence.

2. The Claimant claimed that Alberta was the province of infection of HCV which he had. At the time of the claim and the commencement of the appeal, the Claimant resided in British Columbia. Given the Claimant's province of residence at the material time, this appeal comes before me as a Referee/Arbitrator appointed under order of the Supreme Court of British Columbia.

3. Regrettably the Claimant died while this appeal was outstanding. His personal representative has continued the appeal.

4. While the Claimant was alive and in order to assist the process of obtaining potentially relevant documents, I caused to be issued, on or about March 16, 2011, a Summons to Royal Alexandra Hospital (the "Hospital") in Edmonton, Alberta, where the Claimant believed he was administered a blood transfusion. The Hospital, through the Alberta Health Services, Health Information Management, provided in-patient records for an attendance on November 21, 1987 to November 23, 1987. These records did not disclose any evidence of a transfusion.

5. The Claimant in his original application suggested that he had received transfusions in 1989 at the Hospital. No medical records were ever submitted to support the claim of a transfusion in 1989. A Traceback involving Canadian Blood Services ("CBS") determined that there were no records of a transfusion between the years 1987

to 1994. There was a further admission outside the Class Period in October 1994 but again there was no evidence the Claimant was transfused. The records obtained under Summons for the admission in 1987 confirmed the Claimant was not transfused.

6. On two occasions during this appeal, oral hearings were arranged. The first hearing scheduled in January 2012 was adjourned after notification that the Claimant had died. A subsequent hearing was scheduled for September 5, 2012 for Victoria, B.C., however, the day before the hearing, the personal representative advised that she had no further evidence to submit and had no further submissions to make. Accordingly, I advised the parties that I would write my decision based on the documents on file.

7. On or about January 7, 2011, the Claimant appealed the Administrator's decision and sought review by a Referee.

8. In the Claimant's appeal, he claimed that he had a blood transfusion in 1989 at the Royal Alexandra Hospital in Edmonton. Such proved not to be the case.

9. The records revealed that on November 21, 1987 the Claimant was admitted to Royal Alexandra Hospital suffering from a stab wound. The Claimant was treated by way of chest tube insertion and was discharged after three days. It would appear that the Claimant mistakenly believed at the time of his appeal that this stabbing incident occurred in 1989. Nonetheless, the records from the Claimant's 1987 admission do not reveal any evidence of a blood transfusion.

10. The Claimant's personal representative candidly admits that she has no further evidence on this appeal constituting proof that the Claimant was transfused with blood during the Class Period.

11. Under the Settlement Agreement, the Administrator is bound to administer the Plan in accordance with its terms. Neither the Administrator nor a Referee has any authority to vary the terms of the Plan.

12. The onus of proof, on a balance of probabilities, has not been met under Article 3.01. The appeal must be dismissed and the decision of the Arbitrator is upheld.

DATED at Vancouver, British Columbia, this 3rd day of October, 2012.

A handwritten signature in black ink, appearing to read 'Vincent R.K. Orchard', written over a horizontal line.

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