

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *HCV Settlement Agreement Claim No. 3460*,
2004 BCSC 246

Date 20040223
Docket: C965349
Registry: Vancouver

IN THE MATTER OF THE HCV 1986-1990 TRANSFUSED SETTLEMENT AGREEMENT RE: CLAIM NO. 3460

Before: The Honourable Mr. Justice Pitfield

Reasons for Judgment

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| Counsel for the Claimant: | Self-Represented |
| Counsel for the British Columbia Fund | William A. Ferguson |
| Submissions Received from Fund Counsel: | January 14, 2004 |
| Submissions Received from Claimant: | None Vancouver, B.C. |

[1] The Claimant opposes confirmation of a Referee's decision upholding the Administrator's decision to deny compensation under the HCV 1986-1990 Transfused Settlement Agreement.

[2] In Reasons dated October 22, 2003, the Referee said the following:

Based on the facts established by the documents in this case, it is clear that the Administrator's decision must be sustained. On the basis of the facts before the Administrator, the Administrator had no alternative but to deny the claim. There was simply no proof that the Claimant received a blood transfusion in Canada during the Class Period. It has been said many times that the Administrator has no discretion to allow compensation where the required proof does not exist. The Administrator has no authority to alter or ignore the terms of the Plan. As a Referee, called upon to review a decision of the Administrator, I am also bound by the terms of the Plan and cannot amend it contrary to its terms.

[3] I have carefully reviewed the documentation provided to the Administrator and the Referee. None of the material would permit one to conclude there was any evidence that the Claimant received a blood transfusion in the Class Period from 1986 to 1990. No additional information has been provided on the present application which would cast doubt upon the evidentiary findings of the Administrator or Referee.

[4] The Administrator, Referee and court have no power to amend or vary the Settlement Agreement so that it extends to persons infected by HCV by some means other than a blood transfusion. In the result, the application to oppose confirmation of the Referee's decision must be dismissed.

"Mr. Justice Pitfield"