

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

Citation: *HCV Settlement Agreement Claim No. 743*,  
2004 BCSC 317

Date: 20040310  
Docket: C965349  
Registry: Vancouver

**IN THE MATTER OF THE HCV 1986-1990  
TRANSFUSED SETTLEMENT AGREEMENT  
RE: CLAIM NO. 743**

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:	December 11, 2003
Submissions Received from Claimant:	None Vancouver, B.C.

[1] The Claimant opposes confirmation of a Referee's decision upholding the Administrator's determination that she was not entitled to compensation under the Hepatitis C 1986-1990 Transfused Settlement Agreement. The Administrator's denial resulted from a determination that the Claimant was not a primarily infected person within the meaning of the Settlement Agreement, a conclusion with which the Claimant disagrees.

[2] A pre-condition to entitlement is that a Claimant must have been infected with the Hepatitis C virus by a blood transfusion received in the Class Period from January 1, 1986 to July 1, 1990. Blood is a defined term in the Settlement Agreement. Excluded from it is Rh immune globulin, a multiple donor substance which the Claimant did receive by transfusion in December 1987 and March 1988.

[3] The claimant underwent extensive treatment in hospital over a period of time. She believes she must have contacted the Hepatitis C virus by way of the globulin transfusions or hospital use of non-sterile equipment. The claimant asserts that she used a clean needle and ink when placing a tattoo on her body.

[4] The Referee expressed his reasons for upholding the decision of the Administrator as follows:

It is the role and responsibility of the Administrator, under the settlement agreement, to administer the Plan in accordance with its terms. The Administrator has an obligation under the Plan to review each claim to determine whether the required proof for compensation exists. The words of Article 3.01 of the Plan are clear and unambiguous that the Administrator has no alternative but to reject the claim in circumstances such as these. The Administrator has no discretion to allow a claim where the required proof of receiving blood, as defined, has not been produced. The Administrator must administer the Plan in accordance with its terms and he does not have the authority to alter or ignore the terms of the Plan. A Referee, called upon to

review a decision of the Administrator is also bound by the terms of the Plan and cannot amend it or act contrary to its terms.

I acknowledge the personal feelings and frustrations of the Claimant in having her claim rejected. It is understandable that she feels as she does regarding circumstances which have left her with no clear evidence of how she should have contacted Hepatitis C. Unfortunately, in view of the various risk factors in her life experiences, it is possible she may never learn the cause of her illness. While that is a result that is unsatisfactory for her, neither the Administrator nor a Referee appointed under the Plan has the authority or discretion to Award her claim.

Accordingly, for the reasons set out above, I find that the Administrator has properly determined that the Claimant was not entitled to compensation under the Plan. I further find that the Administrator's decision must be sustained.

[5] I have reviewed the material on the Claimant's file and must conclude that no error appears in the Referee's reasons so that there is no basis upon which to depart from his decision to confirm the Administrator's determination. None of the Administrator, the Referee, or this court is able to rewrite the settlement agreement which ties the right of compensation to infection induced by a transfusion of blood, a fact of which there is no evidence in this case.

[6] In the result, the application to oppose confirmation of the Referee's decision must be dismissed.

“Pitfield J.”