

# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: ***HCV Settlement Agreement Claim #9836,***  
2006 BCSC 1255

Date:20060817  
Docket: C965349  
Registry: Vancouver

**In the Matter of the HCV 1986-1990  
Transfused Settlement Agreement  
Re Claim No. 9836**

Before: The Honourable Mr. Justice Pitfield

## **Reasons for Judgment**

Counsel for the Claimant:	Self-Represented
Counsel for the British Columbia Fund:	William A. Ferguson
Written Submissions Received from Fund Counsel:	May 23, 2006
Written Submissions received from Claimant:	None
Place of Hearing:	Vancouver, B.C.

[1] Claimant 9836 opposes confirmation of a Referee's decision dismissing an appeal from the Administrator's determination that she was not entitled to compensation under the 1986-1990 Settlement Agreement, Transfused HCV Settlement Plan, because she did not prove, on a balance of probabilities, that she was infected with the Hepatitis C virus for the first time by a blood transfusion received in the Class Period.

[2] The Claimant was transfused in the Class Period. She admitted that she was an intermittent, non-prescription, intravenous drug user beginning at a point in time after she was transfused. That being the case, the Settlement Agreement required the Claimant to provide evidence establishing on a balance of probabilities that she was infected for the first time with HCV by a blood transfusion received in Canada during the Class Period.

[3] A traceback was attempted. The donor of one of two units of transfused blood was located and tested negative for the HCV antibody. The other donor could not be located. As a result, the Claimant's application was not rejected on the basis of negative traceback results and the Administrator was obliged to perform additional investigations in an attempt to identify the origin of the Claimant's infection. The relevant protocol required the Administrator to do the following:

- a. obtain such additional information and records as the Administrator in its complete discretion considered necessary to inform its decision;
- b. obtain the opinion of a medical specialist experienced in treating and diagnosing HCV as to whether the HCV infection and the disease history of the Claimant was more consistent with infection at the time of the Class Period Blood transfusions, or

non-prescription intravenous drug use as indicated by the totality of the medical evidence; and

- c. weigh the totality of evidence obtained including the evidence obtained from the additional investigations and determine whether, on a balance of probabilities, the Claimant met the eligibility criteria.

[4] The Administrator did that which was required by the Transfused Settlement Plan and the protocol. The Administrator's actions and determination were reviewed by the Referee who concluded that the Administrator had acted appropriately in rejecting the Claimant's application for compensation.

[5] I have reviewed the material before the Administrator, the Referee's decision, and all material submitted by Fund Counsel in the course of the application and review process. I am satisfied that there has been no error in principle with the result that the Referee's decision should be confirmed.

[6] The issue for determination by the Administrator was whether or not, having regard for all of the information available to the Administrator, it was more likely that the Claimant had been infected by the transfusion of blood obtained from a donor who could not be located and tested, or by the intravenous use of non-prescription drugs. The issue for the Referee was whether the Administrator's decision was correct. The issue for the court in reviewing the Referee's decision is whether there was any error in principle.

[7] The history of the Claimant's use of drugs was chronicled in her medical records. The use, even if it can be characterized as infrequent, extended over a protracted period of time on at least 30 occasions commencing soon after

transfusion. While the Claimant says that she always practised sterile techniques, there is nothing in the evidence which would tend to corroborate that subjective assessment. The protracted use of intravenous drugs made it difficult for the Claimant to identify each occasion on which she used intravenous non-prescription drugs, and to provide reliable evidence of an objective nature to support her claim that the intravenous procedures employed in each instance did not cause infection with the HCV antibody on the balance of probabilities. Apart from the nature and quality of the Claimant's evidence, the medical practitioner engaged by the Administrator to provide an opinion on the origin of the Claimant's infection concluded that the specific character and development of her infection meant it was unlikely she had been infected by the blood transfusion she had received.

[8] Because I find no error in principle in the Referee's decision, the Claimant's application to oppose confirmation of the Referee's decision must be dismissed.

"Mr. Justice Pitfield"