

# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Pre-1986/Post-1990 Hepatitis C Settlement  
Agreement Claim #07-02188,*  
2010 BCSC 768

Date: 20100601  
Docket: C965349  
Registry: Vancouver

**In the Matter of an appeal filed  
pursuant to the *Rules for Appeals* under the  
the *Pre-1986/Post-1990 Hepatitis C  
Settlement Agreement* and its *Protocols*  
Re Claim No. 07-02188**

Before: The Honourable Mr. Justice Pitfield

## **Reasons for Judgment**

Counsel for the Applicant:

Self-Represented

Written Materials Received:

May 14, 2010

Place and Date of Judgment:

Vancouver, B.C.  
June 1, 2010

[1] The Claimant appeals from a determination that he is not entitled to benefits under the Pre-1986/Post-1990 Hepatitis C Settlement Agreement and its Protocols (the "Pre/Post Settlement Agreement").

[2] The Claimant was infected with the Hepatitis C virus during the Class Period. He submitted a claim for compensation to the Administrator. The claim was denied on the basis that the evidence submitted by the claimant failed to establish that he had become infected with Hepatitis C through a blood transfusion, a required condition for compensation under the Pre/Post Settlement Agreement. The denial was upheld on appeal by the Appeals Officer.

[3] Together with his claim, the Claimant submitted a Blood Transfusion History Form, dated August 23, 2007, in which he noted that he had received three blood transfusions in March 1980 at Burnaby General Hospital. A traceback procedure confirmed that the Claimant received three units of blood on March 6, 1980, but it also confirmed that the donors of these three units each tested negative for Hepatitis C virus antibodies.

[4] The Claimant has no other risk factors to suggest that his infection with Hepatitis C was caused by some method other than a blood transfusion. Throughout the claim process, the Claimant contended that he received blood over a two-day period in 1980, instead of at a single attendance. However, the hospital records available to the Administrator and, subsequently, the Appeals Officer, indicated that the Claimant had received only three units of blood in a single day. In the face of the evidence available, both the Administrator and the Appeals Officer were bound by the provisions of the Pre/Post Settlement Agreement to proceed as they did, with the inevitable result being the denial of the claim.

[5] On his further appeal to this court, the Claimant has been able to produce records from the Burnaby General Hospital indicating that, in fact, he received transfusions on both March 7 and March 8, 1980. These additional records came not from the hospital files where records had been purged in the ordinary course, but rather in the form of copies of records provided to his treating physician by the

hospital in 1980. It was only after the Claimant asked his treating physician to do a comprehensive search of past records that these copies were located.

[6] Although the Rules for Appeals state in paragraph 26 that “[t]he only evidence which may be considered on a further appeal to the Court is the evidence contained in the Appeal file”, the prohibition does not apply in this case for the following reasons. First, the Claimant’s evidence throughout has been that he received transfusions over a period of at least two days. Secondly, the Claimant produced the hospital file as part of the support for the claim. It was clearly his intention to provide his complete medical records at the outset. The Claimant should not be prejudiced by the fact that the hospital records were not in fact complete. In the circumstances, the additional documentary evidence is properly before the court and must be considered on the appeal.

[7] The additional records indicate that the Claimant attended at the Burnaby General Hospital on March 7, 1980 and again on March 8, 1980 for transfusions. These records are clearly distinct. Different blood pressure readings are recorded, the physician’s name is recorded in different ways, and there are differences in the time of admission and in the handwritten notations on each. There is no reasonable basis to conclude that the documents are duplicates recording a single visit to the hospital.

[8] The Claimant has established, as he contended from the outset, that he received blood on at least two days. Indeed, when the previously provided record is considered, it appears that the transfusions may have taken place over three days from March 6 through March 8, 1980. Having regard for the perishable nature of blood products, it is not probable that the blood product made available on March 6 was the blood product transfused a day or two days later.

[9] In summary, the Claimant has established that he was infected with the Hepatitis C virus during the Class Period, that he received blood or blood products on multiple occasions in 1980, that he has no other risk factors for Hepatitis C

infection, and that not all of the blood or products have been ruled out as the source of Hepatitis C through the traceback procedure.

[10] The appeal is granted.

[11] The Administrator shall assess the Claimant's entitlement to compensation under the Pre/Post Settlement Agreement and make such payment as is required pursuant to the Agreement as soon as practicable.

"Mr. Justice Pitfield"