

IN THE MATTER OF AN ARBITRATION

BETWEEN:

WALKERTON COMPENSATION PLAN

(The "Administrator")

- and -

THE BOSTONIAN

(The "Claimant")

MARTIN TEPLITSKY, Q.C.
Arbitrator

APPEARANCES:

On behalf of the
Administrator

Milena Protich, Counsel
Kim Chalmers

On behalf of the
Claimant:

Allen Wilford

Hearing held June 6, 2008

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At the time of the Walkerton crises, Ms. [REDACTED] was working in the LCBO store in Walkerton. She certainly drank the water. However, she had no symptoms until after June 1, 2000 when she had shoulder surgery for a chronic problem. After the surgery, she was vomiting and having diarrhea. She was taking percocet (7 a day) and had been ingesting large quantities of advil. Since the surgery she has complained of symptoms which are compatible with either colitis or irritable bowel syndrome.

The issue in this case is whether Ms. [REDACTED]'s problems were caused by the contaminated water which she drank.

She was seen and examined by Dr. Gillian Allen on March 5, 2006 and October 20, 2006. Dr. Allen is a general practitioner, now practising in Toronto. Her opinion is that Ms. [REDACTED]'s problems are the result of drinking the Walkerton water.

There is considerable evidence to the contrary. In particular, the Administrator retained Dr. James Brunton, a specialist in Internal Medicine and Infectious Diseases to review the medical file of Ms. [REDACTED] and Dr. Allen's opinion. He is also a Professor of Medicine and Microbiology. He testified at Phase 1 of the Walkerton Inquiry and has done extensive research on E.coli found in the Walkerton water.

He notes that her principal complaints, as disclosed in the doctor's notes of June 19, 2000, are sore throat, shortness of breath and vomiting when coughing. Contrary to Dr. Allen's opinion, he states that respiratory symptoms cannot be attributed to E.coli. He would have expected diarrhea and lower abdominal pain and tenderness to have predominated if Ms. [REDACTED] were suffering from a bacterial gastroenteritis. In the notes he reviewed, diarrhea is mentioned once and for one day. He concludes that "a diagnosis of infection with E.coli 0157 or Campylobacter is extremely unlikely"(emphasis is his).

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He notes that advil, a non-steroidal anti-inflammatory agent may cause inflammation lesions of the large bowel contrary to the opinion of Dr. Allen. He supported this conclusion with an abstract and excerpt from Micromedex. He notes too that "Longstanding inflammatory colitis as a result of verotoxin-producing E.coli or Campylobacter is not reported in the literature."

He concludes that "...I see no evidence that Ms. ██████ had complaints that were at all likely to be due to E.coli or Campylobacter infection during the time of the Walkerton outbreak...".

Her treating physician, Dr. R. B. Edington, did not diagnose her problems as related to the water. She was also referred to Dr. Nuri Kaal, a gastroenterologist, who does not relate her problems to the water crises. In fact, in a report to Dr. Edington on June 21, 2002, he states: "I explained to [REDACTED] today that most likely her nausea as well as non-specific colitis are NSAID induced.".

In a subsequent letter dated May 1, 2002, in response to a specific question whether the symptoms are related to drinking Walkerton water, he replied: "I do not feel that her symptoms are related to the Walkerton water crisis. I believe her lower GI symptoms are compatible with Irritable Bowel Syndrome. These non-specific colitis found recently in her colonoscopy likely NSAID induced, in view of her Advil".

I prefer the opinion of Dr. Kaal to that of Dr. Allen for two reasons. The first is that he is an expert in the relevant field. The second is he actually treated Ms. [REDACTED] on a referral from Dr. Edington at a time much closer to the relevant events than did Dr. Allen.

I also prefer the opinion of Dr. Brunton to that of Dr. Allen. Dr. Allen is not a specialist in the relevant area. She first saw Ms. [REDACTED] almost 6 years later. I accept as accurate Dr. Brunton's criticisms of Dr. Allen's statements because his opinion is supported by medical literature. As well, he is a recognized expert who is independent. I was impressed with his

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evidence when he testified. He appeared objective and had no axe to grind. Dr. Allen impressed me with her passionate concern for her patient but she played the role of advocate rather than the role of expert.

Based on the evidence before me, the only rational conclusion is that Ms. [REDACTED]'s problems are not caused by the Walkerton water crisis. Accordingly, she has not suffered any damages which I can assess.

DATED the 11th day of June, 2008.



MARTIN TEPLITSKY, Q.C.
Arbitrator