

Shanghai First Intermediate People's Court Civil Judgment

(2004) Hu-Zhong-Min-final civil judgement No. 127

Appellant (Plaintiff in the first instance) Wu Zhongze, male

Appellant (Plaintiff in the first instance) Min Xueying

Authorized agent (attorney): Liu Nianzi, lawyer in Shanghai Waitan Law Firm

Appellant (Defendant in the first instance): Shanghai RAAS Blood Products Company Limited

Authorized agent (attorney): Tong Jianyun, lawyer in Shanghai Kangzheng Law Firm

Appellant (Defendant in the first instance): Shanghai Blood Center

Authorized agent (attorney): Tong Jianyun, lawyer in Shanghai Kangzheng Law Firm

Appellee (Defendant in the first instance) Shanghai Institute of Biological Products under Ministry of Health

Authorized agent: Chang Guocai: Staff in Shanghai Institute of Biological Product , Ministry of Health

Authorized agent (attorney): Xu Aidong, lawyer of Shanghai Zhongxin Zhengyi Law Firm

Appellant Wu Zhongze, Min Xueying refused to accept the Changchuminzi No. 2975 civil judgement (1998) made by Shanghai Changning District People's Court for personal injury compensation and instead appealed to the Shanghai First Intermediate People's Court. The case was registered on January 30, 2004. Shanghai First Intermediate People's Court set up a collegial bench and held a public trial on February 11, 2004. Appellant Wu Zhongze, Min Xueying and Liu Nianzi, the authorized agent (attorney) of appellant, Tong Jianyun, authorized agent of the appellant of Shanghai RAAS

Blood Product Company Limited, and Shanghai Blood Center, Chang Guocai, Xu Aidong, authorized agent (attorney) of appellee Shanghai Research Institute of Biological Products under Ministry of Health appeared in the court for proceedings. The court hearing was closed.

During trial the following facts were concluded. The court of first instance held that appellants Wu Zhongze and Min Xueying are husband and wife. Their son, named Wu Pengtao, was born in September, 1985. In 1987, Wu Pengtao was suspected to have, and it was confirmed in 1988, that he had hemophilia A. Wu Pengtao died from AIDS on June 20th, 2000. Wu Pengtao saw doctors at Shanghai Children Hospital, Shanghai Changning District Tongren Hospital, Shanghai No.6 People's Hospital, Ruijin Hospital which is affiliated with Shanghai Second Medical University, and Shanghai First Pulmonary Hospital for hemophilia treatment. According to the hospital prescription. Wu Pengtao had been treated with factor VIII concentrates produced by Shanghai Institute of Biological Products under the Ministry of Health until September 28, 1995. Since August 8, 1996, Wu Pengtao had also bought factor VIII produced by Shanghai RAAS Blood Products in accordance with the hospital prescription. Since 1994, Wu Pengtao, following the Blood Usage Notice from hospital, had used blood plasma and Cryoprecipitate in succession. On September 23, 1998, Wu Pengtao was hospitalized for illness and it was confirmed that he was infected with HIV/AIDS as well as the Hepatitis C illness. He was then transferred to a hospital for infectious disease. According to the first instance, the Ministry of Health issued a notice on July 14th 1995 to stop producing and clinically using blood clotting factors without virus removing or inactivation and made it clear that the approval documents for all blood clotting factor production obtained before December 31, 1994 were cancelled. It requests that production and sales for all blood clotting factors products without virus inactivation must be stopped instantly. Under the Ministry of Health, Shanghai Institute of Biological Products got production approval for human coagulation factors VIII concentrates in May 1983.

Shanghai RAAS Blood Products Company Limited had taken measures to inactivate S/D virus for three types of blood products including human coagulation factors VIII concentrates and got approval from the Bureau of Drug Administration and Policy and the Ministry of Health on June 6, 1995 to produce products including human coagulation factor VIII concentrates. Wu Zhongze and Min Xueying believed that their boy died of AIDS and Hepatitis C infected by using the blood products from Shanghai Institute of Biological Products, Shanghai RAAS Blood Products Company Limited and Shanghai Blood Center, and request therefore, the three entities for compensation.

After hearing the evidence, the court of first instance concluded that the evidence was not adequate enough to prove that Pengtao had contracted the disease from the factor VIII used in September of 1995, because AIDS had a long incubation period. The court of the first instance thus did not support the claim of Wu Zhongze and Min Xueying for compensation from three entities including Shanghai Institute of Biological Products Ministry of Health. Considering the fact that the appellants are heavily burdened with medical treatment for their boy and the fact that Wu Pengtao got infected with HIV, the court of first instance decided that Shanghai Institute of Biological Products and the other two entities must give a certain amount of economic compensation to Wu Zhongze and Min Xueying and bear joint responsibility to each other. The court of the first instance brought into judgment, according to Article 5 of General Rules of Civil Law in People's Republic of China that, (1) Shanghai Institute of Biological Products affiliated to Ministry of Health, Shanghai RAAS Blood Products Company Limited, Shanghai Blood Center shall pay RMB 100,000 Yuan as economic compensation within 10 days since the effective date of this judgment and bear joint responsibility to each other. (2) Other claims of Wu Zhongze, Min Xueying are not supported. The litigation fee of RMB10,221.40 Yuan was exempted for Wu Zhongze and Min Xueying.

Wu Zhongze and Min Xueying refused to accept the judgment and appealed to Shanghai First Intermediate People's Court with the same claim in the first instance. According to the appellant, the State Council approved the related laws and regulations on HIV/AIDS in 1987. The appellees were required to test all products for HIV. However, under the Ministry of Health, Shanghai Institute of Biological Products failed to test the blood products, and should therefore be at fault. As for Shanghai RAAS Blood Products Company Limited, having the production license did not mean that their blood products were free from problems. Shanghai Blood Center collects blood outside Shanghai, and cannot guarantee that the source of blood can meet the requirements. Therefore, Wu and Min request that the court of second instance support their claim for requesting economic compensation for more than RMB 300,000Yuan.

The appellant Shanghai RAAS Blood Products Company Limited and Shanghai Blood Center also refused to accept the judgment of first instance, and appealed to request that the court of second instance decide that they shall not bear the responsibility of compensation. They claim that there is no evidence of fault during blood collection and products production. There are no legal grounds that the first instance judgment requires them to take joint responsibility.

The appellee Shanghai Institute of Biological Products under Ministry of Health disagrees with the claims of appellant (plaintiff in the first instance). It claims that their blood products are consistent with the then national requirements. But the appellee has faults by continuing to sell the products after related policy were issued. Therefore the court of first instance is correct in its judgment that they shall bear the economic compensation of RMB 100,000 Yuan.

Shanghai First Intermediate People's Court verifies after hearing that the first instance is correct in fact-finding.

Shanghai First Intermediate People's Court holds that the determination of

fault should be based on breach of obligations. That Shanghai Institute of Biological Products Ministry of Health produced Factors VIII in accordance with national regulation before July 14, 1995, does not breach their statutory obligations. Therefore, it is impossible to decide that it has fault legally. The institute, however, continued to sell Factor VIII product after the national government made it clear to stop production and sale of blood clotting factors products without virus inactivation. These actions can be constituted as fault. Although there is no evidence that Wu Pengtao got infected with virus by taking Factors VIII after July 14, 1995, it is undoubted that continuous taking of Factors VIII is negative for virus infection. Shanghai First Intermediate People's Court, therefore, believes that the Shanghai Institute of Biological Products under Ministry of Health shall bear certain civil responsibility for the consequence that Wu Pengtao died of virus infection.

Since the then technology level is relevant for national regulations of both producer and seller and Wu Pengtao's virus infection, the first instance, which handled the case with combination of compensation and economic assistance, is consistent with the objective situation of the case. In other words, although there is no evidence to reflect that Shanghai RAAS Blood Products Company Limited and Shanghai Blood Center have fault for the virus infection of Wu Pengtao, consideration in the court of first instance of the actual difficulties of the appellant (plaintiffs in the first instance) and decision that Shanghai RAAS Blood Products Company Limited and Shanghai Blood Center bear joint responsibility are proper. The first trial is thus supported.

The behavior of production and sales by the Shanghai Institute of Biological Products under the Ministry of Health before July 14th, 1995, were faultless according to law, and there is no direct evidence to prove that the Institute's behavior of selling products after that date led to the HIV infection of Wu Pengtao. Due to lack of adequate grounds for full compensation, the limited compensation of RMB100,000 Yuan to cover the injury should be

considered reasonable. Shanghai First Intermediate People's Court thus supports the judgment of the first instance.

In conclusion, Shanghai First Intermediate People's Court does not support the claims of appellants Wu Zhongze, Min Xueying, Shanghai RAAS Blood Products Company Limited and Shanghai Blood Center. In accordance with item 1.1 article 153 of Civil Procedure Law of People's Republic of China, it is ruled:

Appeal dismissed, the judgment of the first trial sustained.

The litigation fee of RMB 10,221.40 Yuan for second trial is exempted from appellants.

The judgment is final.

February 17, 2004

**Notice of Retrial Rejection by Shanghai First Intermediate
People's Court**

Wu Zhongze, Min Xueying:

You refuse to accept the (2004) Hu-Zhong-Min-final civil judgement No. 127 by Shanghai First Intermediate People's Court in the case of personal injury concerning disputes with Shanghai Institute of Biological Products under Ministry of Health, Shanghai RAAS Blood Products Company Limited and Shanghai Blood Center. You apply for a retrial by arguing that the blood products produced and sold by the respondent have serious defects, which caused the death of Wu Pengtao by infecting Hepatitis C and HIV and claim that the respondent shall bear all liability for compensation.

Upon trial, in light of the fact that Shanghai Institute of Biological Products under the Ministry of Health in its sales before July 15th, 1995 did not breach its statutory obligations and there is no direct evidence that the institute had fault in its sales after July 14th 1995, which led to infection of HIV of Wu Pengtao, we believe that the judgment is clear in fact finding and the decision to give you RMB 100,000 Yuan as economic assistance to compensate for your financial losses and mental injury is proper and reasonable. Your appeal for retrial lacks factual and legal grounds.

In conclusion, Shanghai First Intermediate People's Court does not support your application, which does not reach the criteria of preconditions for retrial according to Article 179 of Civil Procedure Law of People's Republic of China. Application rejected.

23th,Decemeber, 2004